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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057222
Party	Plaintiff Jollibee Foods Corporation
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Date	04/18/2014
Attachments	Jollibee - Mot for Summary Judgment - v CHICK-N-JOY.pdf(779622 bytes) Jollibee - Exhibit list and Exs 1-5 to Mot for Summary Jud - v CHICK-N-JOY.pdf(2322967 bytes) Jollibee - Exs 7-12 to Mot for Summary Jud - v CHICK-N-JOY.pdf(2254929 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Registrant: Chick-N-Joy Systems Limited)
Registration No.: 3567736)
Registration Date: January 27, 2009)
Mark: CHICK-N-JOY)
_____)

Jollibee Foods Corporation,)

Petitioner,)

v.)

Chick-N-Joy Systems Limited,)

Registrant.)
_____)

Cancellation No. 92057222

**PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND
MEMORANDUM OF LAW IN SUPPORT**

I. INTRODUCTION

This is a cancellation action where summary judgment should be granted because the mark in the registration has never been used in commerce. Chick-N-Joy Systems Limited ("Registrant" or "CNJ") obtained U.S. Registration No. 3567736 for the mark CHICK-N-JOY on January 27, 2009. The registration covers "restaurant services, take-out restaurant services" in Class 43. Because Registrant admitted in its discovery responses that it never used the mark in the United States or in commerce for the covered services, and more than three years have transpired since its registration issued, Registrant has abandoned the Mark. Because the undisputed material facts show that Registrant's mark CHICK-N-JOY has been abandoned, Petitioner, Jollibee Foods Corporation ("Petitioner"), is entitled to summary judgment in its favor, and Registration No. 3567736 should be cancelled.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Course of Proceedings and Description of the Record.

CNJ, the Registrant of Registration No. 3567736 for CHICK-N-JOY (the "CHICK-N-JOY Mark"), is a Canadian restaurant company. (Ex. 1, File History for Registration No. 3567736.) On November 1, 2004, Registrant filed the underlying application, Application No. 78508997, on the basis of Section 1(b) (15 U.S.C. § 1051(b)), intent to use, and Section 44(e) (15 U.S.C. § 1126(e)), foreign registration. (Ex. 1.) On December 27, 2005, Registrant was issued a Notice of Allowance, providing Registrant three years to demonstrate a use basis for registration. (Ex. 1.) Registrant did not file any proof of use during the allowance period and filed first, second, third, fourth and fifth extensions of time to prove use of the mark in commerce. (Ex. 1.)

On December 15, 2008, as the three year allowance period came to a close, Registrant filed a request to delete the intent to use basis and register only on the basis of Section 44(e). (Ex. 1.) On January 27, 2009, Registrant received Registration No. 3567736 under Section 44(e), relying on Canadian Registration No. TMA244314. (Ex. 2, Registrant's Registration Certificate.), Before issuance of U.S. Registration No. 3567736, Registrant did not claim use or file any evidence of proof of use of the CHICK-N-JOY mark in commerce in the United States. (Ex. 1.) Registration No. 3567736 covers only "restaurant services, take-out restaurant services" in Class 43. (Ex. 2.)

On May 16, 2013, Petitioner filed this cancellation action alleging abandonment of Registration No. 3567736. (Ex. 3, TTAB Docket No. 1, Petition for Cancellation.) On January 22, 2014, within the discovery period set by the Board, Petitioner served Registrant with discovery requests, namely, requests for admission, interrogatories, and document requests. (Ex. 4, Declaration of M. Tally George (hereinafter, T. George Decl.), ¶ 5.) Registrant's responses to Petitioner's discovery requests were due by February 26, 2014. (Ex. 4, T. George Decl., ¶ 6.) On

February 20, 2014, Registrant provided responses to Petitioner's First Set of Requests for Admission. (Ex. 4, T. George Decl., ¶ 7.) Registrant did not respond to the interrogatories or requests for production by the deadline. (Ex. 4, T. George Decl., ¶ 8.) On Friday, March 7, 2014, after several reminders about Registrant's failure to timely respond to the remaining discovery, Registrant provided incomplete responses to Petitioner's interrogatories and four pages of documents consisting of the CHICK-N-JOY registration certificate and an image of the bottom of a food bag. (Ex. 4, T. George Decl., ¶ 9.) Counsel for Registrant indicated that further responses would be provided by that weekend or following Monday, and in the next week. (Ex. 4, T. George Decl., ¶ 10 and Ex. A, March 7, 2014 email from M. Mullineaux.) Registrant did not provide the further responses within that timeframe. (Ex. 4, T. George Decl., ¶ 11.)

To avoid the costs of and delay associated with a motion to compel and to allow Petitioner time to receive and review Registrant's responses to discovery before trial which was set to begin on March 24, Petitioner obtained Registrant's consent to a 30-day extension of the trial deadlines. (Ex. 4, T. George Decl., ¶ 11.) On March 14, 2014, Petitioner requested and was granted a 30-day extension of its trial deadlines. (Ex. 4, T. George Decl., ¶ 12 and Ex. B, TTAB Docket No. 5. Motion to Extend, Ex. C, TTAB Docket No. 6, Order Granting Motion.) On March 18, 2014, after further prompting, Registrant provided its remaining responses to discovery, with an additional 10 pages of documents, for a total document production of 14 pages of documents. (Ex. 4, T. George Decl., ¶ 13). In his cover email that accompanied Registrant's discovery responses, counsel for Registrant stated that "we have produced all documents and information requested in discovery in the possession of my client." (Ex. 4, T. George Decl., ¶ 14 and Ex. D, March 18, 2014 email from M. Mullineaux; Ex. 5, Registrant's Entire Document Production.) None of the documents produced by Registrant show any use in commerce of the CHICK-N-JOY Mark in

relation to "restaurant services, take-out restaurant services", between January 27, 2009 and May 16, 2013. (Ex. 5, Registrant's Entire Document Production.)

B. Undisputed Facts Related to Petitioner's Standing to Cancel.

Petitioner owns Registration No. 3949145 for CHICKENJOY covering "prepared dishes primarily containing chicken cooked Filipino-style, sold only in Jollibee's stores," in International Class 29. (Ex. 6, Petitioner's Registration Certificate.) Petitioner applied for its CHICKENJOY mark on December 14, 2005 and the mark registered under Section 1(a) on April 19, 2011, based on a claim of use in commerce from at least as early as May 28, 1998. (Ex. 6.) Petitioner also owns suspended U.S. Application No. 85524814 for CHICKENJOY in International Class 43, filed on January 25, 2012, which is blocked from registration by Registrant's Registration No. 3567736. (Ex. 7, Application No. 85524814 TSDR file history and Nov. 12, 2012 Office Action.) Registrant admitted that Petitioner owns U.S. Registration No. 3949145 for CHICKENJOY and Application No. 85524814 for CHICKENJOY. (Ex. 8, Petitioner's Requests for Admission, Nos. 109-110; Ex. 9, Registrant's Responses to Petitioner's Requests for Admission, Nos. 109-110)¹.

C. Registrant Never Used the CHICK-N-JOY Mark for "restaurant services, take-out restaurant services" in the United States.

Registration No. 3567736 issued on January 27, 2009. (Ex. 2.) Registration No. 3567736 covers services in International Class 43, namely, "restaurant services, take-out restaurant services." (Ex. 2.) Registration No. 3567736 does not cover any packaging material or packaged goods and does not cover any printing or shipping services. (Ex. 2.)

In its responses to Petitioner's Requests for Admission, Registrant admitted that no "restaurant services, take-out restaurant services" have been provided to United States consumers under the CHICK-N-JOY Mark, from the January 27, 2009 registration date to the present:

¹ For the Board's ease of reference, Petitioner attaches as exhibits its relevant discovery requests and then Registrant's entire response as a separate exhibit, because Registrant's responses did not include the text of the relevant request.

7. Registrant's CHICK-N-JOY Mark is not used to provide services to consumers in any United States restaurants.
8. Registrant's CHICK-N-JOY Mark is not used to provide goods to consumers in any United States restaurants.
9. Registrant's CHICK-N-JOY Mark is not used on any packaging provided to United States consumers in any CHICK-N-JOY restaurants in the United States.
10. Registrant's CHICK-N-JOY Mark is not used on any menus or signage viewable by consumers inside or outside any CHICK-N-JOY restaurants in the United States.
11. There are no restaurants in the United States where a United States consumer may purchase or be served CHICK-N-JOY chicken goods.
12. There currently is not any person, company, or entity offering or providing restaurant services in United States commerce under the CHICK-N-JOY Mark, at a restaurant bearing the name CHICK-N-JOY.
13. There currently is not any person, company, or entity offering or providing restaurant services in United States commerce under the CHICK-N-JOY Mark.
14. As of May 16, 2013, there was not any person, company, or entity offering or providing restaurant services in United States commerce under the CHICK-N-JOY Mark.

Registrant Chick-N-Joy Systems Limited hereby answers the Petitioner's Request
for Admissions:

7-14. Admitted.

(Ex. 8, Petitioner's Requests for Admission, Nos. 7-14; Ex. 9, Registrant's Responses to
Petitioner's Requests for Admission, Nos. 7-14).

24. There currently is not any licensed or franchised entity offering or providing restaurant services of any kind in United States commerce under any CHICK-N-JOY Mark in block or stylized form, under the authorization of Registrant.
25. From May 16, 2010 to May 16, 2013, there was no licensed or directly owned entity offering or providing restaurant services of any kind in United States commerce under any CHICK-N-JOY Mark in block or stylized form.
26. From January 27, 2009 to January 27, 2013, there was no licensed or directly owned entity offering or providing restaurant services of any kind in United States commerce under any CHICK-N-JOY Mark in block or stylized form.

Response:

16-31 Admitted.

(Ex. 8, Petitioner's Requests for Admission, Nos. 24-26; Ex. 9, Registrant's Responses to Petitioner's Requests for Admission, Nos. 24-26).

Registrant stated that two third-party manufacturers located in the United States place Registrant's mark on packaging -- specifically, food bags. (Ex. 11, Registrant's Amended Responses to Interrogatories, No. 5.) The packaging is not used by Registrant for any restaurant services in the United States, but instead is used for Registrant's Canadian restaurants:

18. Any packaging prepared in the United States bearing a CHICK-N-JOY Mark is not used by any CHICK-N-JOY restaurants operating in the United States.
19. Any packaging in the nature of food bags or containers prepared in the United States and bearing a CHICK-N-JOY Mark, is not used for Registrant's restaurant services in the United States.
20. Any packaging in the nature of food bags or containers prepared in the United States and bearing a CHICK-N-JOY Mark, is not used for Registrant's take-out restaurant services in the United States.
21. Any packaging in the nature of food bags or containers prepared in the United States and bearing a CHICK-N-JOY Mark is not provided to any restaurant consumers in the United States.
22. No restaurant customers of Registrant see any packaging in the nature of food bags or containers that are prepared in the United States and bear a CHICK-N-JOY Mark.
23. Any packaging in the nature of food bags or containers that is prepared in the United States and bears a CHICK-N-JOY Mark is not used for restaurant services in the United States.

Response:

16-31 Admitted.

(Ex. 8, Petitioner's Requests for Admission, Nos. 18-23; Ex. 9, Registrant's Responses to Petitioner's Requests for Admissions, Nos. 18 to 23.)

In its responses to discovery requests that sought all information about Registrant's use of the CHICK-N-JOY Mark in commerce, Registrant did not provide any interrogatory answer, document or other information or evidence that showed the food bags had been used in the United States for "restaurant services, take-out restaurant services" at any time between the January 27,

2009 registration date and the May 16, 2013 filing date of this cancellation action. (Ex. 8, Petitioner's Requests for Admission, Nos. 7-14, 16-26; Ex. 9, Registrant's Responses to Petitioner's Requests for Admission, Nos. 7-14, 18-26; Ex. 10, Petitioner's Interrogatories Nos. 1-4, 6-9, 15; Ex. 11, Registrant's Amended Responses to Interrogatories, Nos. 1-4, 6-9, 15.)

Registrant explained its failure to use the CHICK-N-JOY Mark after registration, by saying that it did not understand the instructions of its counsel, that it was waiting for direction from its counsel, and that it did not ask its counsel for further directions about how to use the mark. (Ex. 11, Registrant's Amended Responses to Interrogatories, No. 14.)

III. ARGUMENT

A. Petitioner Meets the Summary Judgment Standard for Abandonment.

Summary judgment should be granted if the evidentiary materials in the record show that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). *Amazon Technologies Inc. v. Wax*, 95 USPQ2d 1865, 1871 (TTAB 2012). If the Board ascertains that no genuine dispute regarding a material fact exists and that a party is entitled to judgment in its favor, then summary judgment is appropriate. *Lloyd's Food Products, Inc. v. Eli's, Inc.*, 987 F.2d 766, 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993); *Old Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992). When the moving party has supported its motion with sufficient evidence that indicates there is no genuine dispute of material fact, the burden then shifts to the non-moving party to demonstrate the existence of a genuine dispute of material fact to be resolved at trial. *Enbridge, Inc. v. Excelerate Energy LP*, 92 USPQ2d 1537, 1540 (TTAB 2009).

Petitioner is entitled to summary judgment in its favor and CNJ's registration should be cancelled because the undisputed facts show that mark at issue has not been used for the covered services over a three year period, and therefore has been abandoned:

A mark shall be deemed to be "abandoned" ... (1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

15 U.S.C. § 1127.

In fact, Registrant has admitted it never used the CHICK-N-JOY Mark for the covered services in commerce affecting the United States, between January 27, 2009, when the registration issued, and today. (Ex. 8, Petitioner's Requests for Admission, Nos. 7-14, 18-26; Ex. 9, Registrant's Responses to Petitioner's Requests for Admission, Nos. 7-14, 18-26; Ex. 10, Petitioner's Interrogatories Nos. 1-4, 6-9, 15; Ex. 11 Registrant's Amended Responses to Interrogatories, Nos. 1-4, 6-9, 15.) Because the CHICK-N-JOY Mark was not used in commerce for any Class 43 services between the January 27, 2009 registration date to the May 13, 2013 date this cancellation action was filed, the CHICK-N-JOY Mark in Registration No. 3567736 has been abandoned for the covered services, and summary judgment cancelling the registration should be granted.

B. Petitioner Has Standing.

Petitioner is the owner of a valid and subsisting registration and a pending application for a similar mark, namely, CHICKENJOY. Registration No. 3949145 and CHICKENJOY, Application No. 85524814. (Exs. 6-7.) The pending application is blocked from registration by Registrant's CHICK-N-JOY Mark and currently suspended. (Ex. 7.) Petitioner is submitting a copy of its

registration and application status for the record. (Exs. 6-7.) Because Petitioner is the owner of a valid registration for a competing mark and a pending application for a competing mark, Petitioner has established standing. *Cunningham v. Laser Golf Corp.*, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) (ownership of pleaded registration establishes standing); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1029-31, 213 USPQ 185, 189 (CCPA 1982) (standing is part of Petitioner's case).

C. Registrant Never Used and Therefore Abandoned the CHICK-N-JOY Mark for "restaurant services, take-out restaurant services" in the United States.

To prevail on a claim for cancellation on the ground of abandonment, a party must prove abandonment of the mark as the result of nonuse by the registrant. *On-Line Careline, Inc. v. Am. Online*, 56 USPQ2d 1471, 1476 (Fed. Cir. 2000). Nonuse for three consecutive years is *prima facie* evidence that a mark has been abandoned. 15 U.S.C. § 1127. Nonuse of the mark for three consecutive years shifts the burden to the party contesting abandonment to show either: (1) evidence to rebut the presumption of nonuse or (2) evidence of an intent to resume use. *Imperial Tobacco Ltd. v. Philip Morris Inc.*, 14 USPQ2d 1390, 1396 (Fed. Cir. 1990). Section 44(e) registrations are subject to the same use requirements as registrations issued on the basis of use. *Imperial Tobacco Ltd.*, 14 USPQ2d at 1396 (affirming summary judgment and cancellation of registration on abandonment where Section 44(e) registrant never used its mark in commerce after registration); 15 U.S.C. § 1126(f).

In *Imperial Tobacco*, registrant obtained a registration under Section 44(e) and failed to use the mark for over three years after registration. 14 USPQ2d at 1396. Registrant blamed its failure to use the mark on its fear of a lawsuit and attempted foreign licensing activity, and Registrant also testified about its intent not to abandon the mark. 14 USPQ2d at 1394-95. The Federal Circuit rejected these excuses and held that a registration obtained on the basis of a foreign registration

where no use in commerce of the mark is required before registration, nonetheless requires the same statutory interpretation and proof of use as for a use-based registration after registration. 14 USPQ2d 1395-96. Without use of the mark after registration, the mark was cancelled on the grounds of abandonment. 14 USPQ2d at 1395-96.

CNJ did nothing to use the CHICK-N-JOY Mark in commerce, as CNJ conceded in its answer and responses to discovery in these proceedings. (Ex. 5, Registrant's Entire Document Production; Ex. 8, Petitioner's Requests for Admission, Nos. 7-14, 18-26; Ex. 9, Registrant's Responses to Petitioner's Requests for Admission, Nos. 7-14, 18-26; Ex. 10, Petitioner's Interrogatories, Nos. 1-4, 6-9, 15; Ex. 11, Registrant's Amended Responses to Interrogatories, Nos. 1-4, 6-9, 15; Ex. 12, TTAB Docket No. 4, Registrant's Answer.) Like the registrant in *Imperial Tobacco*, 14 USPQ2d 1395-96, CNJ tried to excuse its failure to use the CHICK-N-JOY Mark in commerce by blaming counsel, CNJ's misunderstanding of the use requirements, unsupported claims of efforts to establish a franchise program in Canada, and a conclusory statement that it had no intent to abandon the mark in the United States. (Ex. 10, Petitioner's Interrogatories, No. 14; Ex. 11, Registrant's Amended Responses to Interrogatories, No. 14; Ex. 12, TTAB Docket No. 4.) Neither a statement that there is no intention to abandon the mark, nor a misunderstanding of the use requirements, nor use in another country is sufficient to excuse nonuse in the United States. *Imperial Tobacco Ltd.*, 14 USPQ2d at 1393-96. See also *In re Conusa Corp.*, 32 USPQ2d 1857, 1859 (Comm'r Pats. 1993) (statement of no intention to abandon the mark is not enough to excuse nonuse).

Although no proof of use was needed before registration under Section 44(e), CNJ was required to use its CHICK-N-JOY Mark in commerce for the covered services to maintain the validity of the mark after registration. *Imperial Tobacco Ltd.*, 14 USPQ2d 1395-96; 15 U.S.C. § 1126(e)-(f). Moreover, because CNJ never used the CHICK-N-JOY Mark in commerce in the

United States for any restaurant services, it cannot have an intent to resume use of the CHICK-N-JOY Mark for these services. *Imperial Tobacco*, 14 USPQ2d at 1394 (statutory language pertaining to an "intent not to resume" use does not apply where the use never started).

Registrant admits that the CHICK-N-JOY Mark has never been used in the United States for the covered services, that no goods have been provided to United States consumers in a CHICK-N-JOY restaurant, that no packaging and no signage has been provided to or been viewable by any United States consumers at a CHICK-N-JOY restaurant, and that there are no restaurants in the United States where any consumer may purchase or be served any goods sold under the CHICK-N-JOY Mark. (Ex. 8, Petitioner's Requests for Admissions, Nos. 7-14, 18-26, 71-79; Ex. 9, Registrant's Responses to Petitioner's Requests for Admissions, Nos. 7-14, 18-26, 71-79.) Because the undisputed facts demonstrate that the CHICK-N-JOY Mark has never been used in commerce in the United States for the covered services, CNJ has abandoned the CHICK-N-JOY Mark with respect to the covered services. Accordingly, Registration No. 3567736 should be cancelled.

D. Printing Food Bags in the United States for Use in Canada is Not Use in Commerce.

Manufacturing or preparing components in the United States and shipping those components to the trademark owner in a foreign country for the owner's use in providing its goods or services in the foreign country does not constitute use in commerce. *General Healthcare Ltd. v. Qashat*, 70 USPQ2d 1566, 1569-70 (1st Cir. 2004) (trademark abandoned because transportation of goods bearing a trademark from a manufacturer in the United States to trademark owner's offices in the United Kingdom is insufficient to confer continued ownership rights in the mark); *Avakoff v. Southern Pacific Company*, 226 USPQ 435, 436 (Fed. Cir. 1985) (manufacturer's shipment of goods to trademark owner for use by trademark owner in a foreign country does not

constitute use of mark in commerce under the Lanham Act)); *Clorox Co. v. Salazar*, 108 USPQ2d 1083, 1086-87 (TTAB 2013) (shipment by manufacturer of component bearing applicant's trademark from the United States to a foreign country is merely transportation of goods in preparation for offering goods for sale that does not constitute *bona fide* use of an applicant's trademark in commerce). Moreover, use of a trademark in the United States must be open and notorious. *Aycock Engineering Inc. v. Airflite Inc.*, 90 USPQ2d 1301, 1306-07 (Fed. Cir. 2009) (there must be an open and notorious public offering of the services to those for whom the services are intended). Mere preparation to use a mark in commerce is not use of a mark in commerce. *Aycock*, 90 USPQ2d at 1308-09.

In *Clorox*, applicant engaged a manufacturer in Utah to manufacture machinery components bearing the trademark at issue and ship those parts to applicant in Mexico. The manufacturing and placing of the mark on the components in the United States, then shipment to Mexico where they were assembled into applicant's final product, was not use of the mark to support a registration. *Clorox* at 1084. Registrant's engagement of manufacturers in the United States is indistinguishable from the situation in *Clorox*. Registrant engages bag manufacturers in United States to manufacture bags bearing Registrant's mark, the manufacturers print Registrant's mark on the bags, then ship the bags to Registrant for use in Registrant's Canadian restaurants. (Ex. 8, Petitioner's Requests for Admission, Nos. 18-23; Ex. 9, Registrant's Responses to Petitioner's Requests for Admission, Nos. 18-23; Ex. 10, Petitioner's Interrogatories, No. 5; Ex. 11, Registrant's Amended Response to Petitioner's Interrogatories, No. 5.)

The food bags are never used by Registrant in the United States in conjunction with any restaurant services. (Ex. 8, Petitioner's Requests for Admission, Nos. 9-10, 18-23; Ex. 9 Registrant's Responses to Petitioner's Requests for Admission, Nos. 9-10, 18-23.) The food bags are never seen by United States consumers of Registrant's covered services. (Ex. 8, Petitioner's

Requests for Admission, Nos. 9-10, 18-23; Ex. 9, Registrant's Responses to Petitioner's Requests for Admission, Nos. 9-10, 18-23.) Further, as in *Aycock*, CNJ's arrangements to have food bags printed in preparation of offering restaurant services in Canada, while never offering restaurant services to a single customer in the United States, is not open and notorious use of the CHICK-N-JOY Mark in commerce. *Aycock*, 90 USPQ2d at 1303.

Registrant cannot rely on the activity of engaging a manufacturer in the United States to prepare Registrant's packaging that is used in a foreign country, as use of the mark for restaurant services in the United States. *Aycock* at 1309; *General Healthcare* at 1569-70; *Avakoff* at 436, *Clorox* at 1086-87. Arranging for the manufacture of food bags in United States simply does not constitute use in commerce of the CHICK-N-JOY Mark for covered services, and CNJ cannot avoid abandonment on this basis. Because Registrant has no evidence to rebut the presumption of abandonment by showing use in commerce of the CHICK-N-JOY Mark for restaurant services, Petitioner's motion for summary judgment should be granted.

E. Registrant Has No Valid Reason to Excuse its Nonuse of the Mark.

A registrant claiming excusable nonuse of a mark cannot blame circumstances within its control for its nonuse. *In re Conusa Corp.*, 32 USPQ2d 1857, 1859 (Comm'r Pat. 1993) (only limited, special circumstances beyond the registrant's control, such as regulatory prohibitions, fire or other catastrophes, can excuse nonuse). Business decisions not to use a mark are not excusable nonuse. *Rivard v. Linville*, 45 USPQ2d 1374, 1376-77 (Fed. Cir. 1998) (half-hearted attempts to initiate use and a business decision not to proceed do not excuse nonuse).

CNJ seeks to excuse its nonuse of the CHICK-N-JOY Mark because it misunderstood the use requirements for the mark. (Ex. 10, Petitioner's Interrogatories, No. 14; Ex. 11, Registrant's Amended Response to Interrogatories, No. 14; Ex. 12, TTAB Docket No. 4, ¶ 17.) The cover

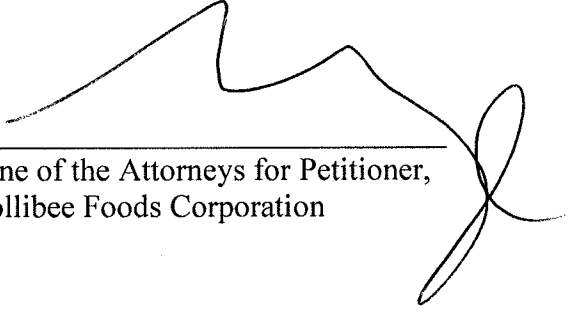
sheet to the registration certificate for the CHICK-N-JOY Mark states that a registrant must provide a declaration of use or excusable nonuse, between the fifth and sixth year of registration. (Ex. 5, Registrant's Entire Document Production, certificate cover page.) CNJ concedes that its former counsel informed CNJ of the same deadline, but did not explain the consequences of nonuse for a three-year period. (Ex. 11, Registrant's Amended Response to Interrogatories, No. 14, ¶¶5-8.) After admitting it never used the CHICK-N-JOY Mark after registration, CNJ also claims it made a few unsuccessful attempts at use, but was content to wait for further direction from its counsel because it mistakenly believed the mark was secure as long as use began by the fifth to sixth year after registration. (Ex. 11, Registrant's Amended Response to Interrogatories, No. 14, ¶¶ 9-18.)

CNJ's misunderstanding of the law, its failure to seek clarification of the requirements, and its own business decision not to use the mark sooner, does not constitute excusable nonuse. *Rivard v. Linville*, 45 USPQ2d at 1376 (registrant must show that under his particular circumstances his activities are those that a reasonable businessman with a *bona fide* intent to use the mark in United States commerce would have undertaken). CNJ's excuses are also improper because it has never filed and has no basis to file a declaration of excusable nonuse. 15 U.S.C. § 1058(b)(2) (declaration must show that nonuse is due to special circumstances which excuse nonuse). Accordingly, CNJ has no valid excuse for its nonuse and CNJ's failure to adhere to the same post-registration requirements as every other registrant cannot serve as a reason to avoid cancellation of Registration No. 3567736.

IV. CONCLUSION

Petitioner, Jollibee Foods Corporation, is entitled to summary judgment in its favor against Registrant, Chick-N-Joy Systems Limited, because the CHICK-N-JOY Mark in Registration No. 3567736 has not been used in the U.S. for the covered services for three years after registration, by Registrant's own admission. Therefore, Petitioner's Motion for Summary Judgment should be granted, Registration No. 3567736 cancelled, and the Board should enter judgment in Petitioner's favor.

Dated: April 18, 2014



One of the Attorneys for Petitioner,
Jollibee Foods Corporation

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PROOF OF SERVICE AND FILING

The undersigned hereby certifies that the foregoing **PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT** was electronically filed with the ESTTA and served on Registrant via U.S. Mail, with courtesy copy via email, to:

W. Mark Mullineaux
Astor Weiss Kaplan & Mandel LLP
200 South Broad Street, The Bellevue, Suite 600
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UNITED STATES
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this 18th day of April 2014.

M. Tally George

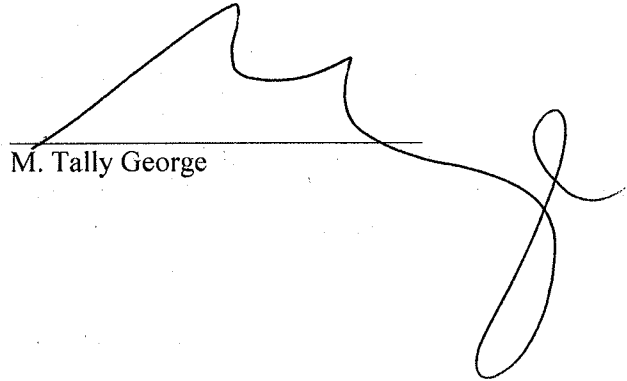
A handwritten signature in black ink, appearing to be 'M. Tally George', is written over a horizontal line. The signature is stylized with a large loop at the end.

Exhibit List for Petitioner's Motion for Summary Judgment

- Exhibit 1 File History for Registrant's Registration No. 3567736
- Exhibit 2 Registrant's Certificate of Registration No. 3567736
- Exhibit 3 TTAB Docket No. 1 Petition for Cancellation
- Exhibit 4 T. George Declaration
 - Exhibit A - March 7, 2014 Mullineaux Email
 - Exhibit B - TTAB Docket No. 5 - March 14, 2014 Consented Motion to Extend
 - Exhibit C - TTAB Docket No. 6 - March 14, 2014 Order Granting Motion
 - Exhibit D - March 18, 2014 Mullineaux Email
- Exhibit 5 Registrant's Entire Document Production
- Exhibit 6 Petitioner's Certificate of Registration No. 3949145
- Exhibit 7 File History for Petitioner's Application No. 85524814 and
Nov. 12, 2012 Office Action Refusing Registration
- Exhibit 8 Petitioner's Requests for Admission - Relevant Excerpts
- Exhibit 9 Registrant's Responses to Petitioner's Requests for Admission
- Exhibit 10 Petitioner's Interrogatories - Relevant Excerpts
- Exhibit 11 Registrant's Amended Responses to Interrogatories
- Exhibit 12 TTAB Docket No. 4 Registrant's Answer

EXHIBIT 1

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Mark: CHICK-N-JOY

CHICK-N-JOY

US Serial Number: 78508997
US Registration Number: 3567736
Register: Principal
Mark Type: Service Mark
Status: A cancellation proceeding is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.
Status Date: May 17, 2013
Publication Date: Oct. 04, 2005

Application Filing Date: Nov. 01, 2004

Registration Date: Jan. 27, 2009

Mark Information

Mark Literal Elements: CHICK-N-JOY
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Foreign Information

Foreign Registration Number: TMA244314
Foreign Registration Date: May 02, 1980
Foreign Application/Registration Country: CANADA
Foreign Expiration Date: May 02, 2010

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks "*" identify additional (new) wording in the goods/services.

For: RESTAURANT SERVICES, TAKE-OUT RESTAURANT SERVICES

International Class(es): 043 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 44(e)

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: Yes	Currently 44E: Yes	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Chick-N-Joy Systems Limited
Owner Address: 4449 Kingston Road
Toronto, Ontario M1E 2N7
CANADA
Legal Entity Type: CORPORATION
State or Country Where Organized: CANADA

Attorney/Correspondence Information

Attorney Name: Kyle T. Peterson	Attorney of Record	Docket Number: 1723.26US01
Attorney Primary Email Address: trademark@ptslaw.com		Attorney Email Authorized: No
Correspondent		
Correspondent Name/Address: WILLIAM M MULLINEAUX ASTOR WEISS KAPLAN & MANDEL LLP 200 SOUTH BROAD STREET THE BELLEVUE SUITE 600 PHILADELPHIA, PENNSYLVANIA 19102 UNITED STATES		
Phone: 6123495740		Fax: 6123499266
Correspondent e-mail: trademark@ptslaw.com		Correspondent e-mail Authorized: No

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 17, 2013	CANCELLATION INSTITUTED NO. 999999	57222
Jan. 27, 2009	REGISTERED-PRINCIPAL REGISTER	
Dec. 22, 2008	1(B) BASIS DELETED; PROCEED TO REGISTRATION	76873
Dec. 15, 2008	NOTICE OF ALLOWANCE CANCELLED	76873
Dec. 22, 2008	CASE ASSIGNED TO INTENT TO USE PARALEGAL	76873
Dec. 15, 2008	TEAS DELETE 1(B) BASIS RECEIVED	
Jun. 03, 2008	EXTENSION 5 GRANTED	98765
Jun. 03, 2008	EXTENSION 5 FILED	98765
Jun. 03, 2008	TEAS EXTENSION RECEIVED	
Dec. 19, 2007	EXTENSION 4 GRANTED	98765
Dec. 19, 2007	EXTENSION 4 FILED	98765
Dec. 19, 2007	TEAS EXTENSION RECEIVED	
Sep. 05, 2007	ATTORNEY REVOKED AND/OR APPOINTED	
Sep. 05, 2007	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jun. 07, 2007	EXTENSION 3 GRANTED	98765
Jun. 07, 2007	EXTENSION 3 FILED	98765
Jun. 07, 2007	TEAS EXTENSION RECEIVED	
Dec. 19, 2006	EXTENSION 2 GRANTED	98765
Dec. 19, 2006	EXTENSION 2 FILED	98765
Dec. 19, 2006	TEAS EXTENSION RECEIVED	
Jun. 22, 2006	EXTENSION 1 GRANTED	98765
Jun. 22, 2006	EXTENSION 1 FILED	98765
Jun. 22, 2006	TEAS EXTENSION RECEIVED	
Dec. 27, 2005	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Oct. 04, 2005	PUBLISHED FOR OPPOSITION	
Sep. 14, 2005	NOTICE OF PUBLICATION	
Jun. 16, 2005	LAW OFFICE PUBLICATION REVIEW COMPLETED	71466
Jun. 10, 2005	ASSIGNED TO LIE	71466
Jun. 09, 2005	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 06, 2005	ASSIGNED TO EXAMINER	78303
Nov. 08, 2004	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jan. 27, 2009

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Cancellation

Proceeding Number: 92057222

Filing Date: May 16, 2013

Status: Pending

Status Date: May 16, 2013

Interlocutory Attorney: GEORGE POLOGEORGIS

Defendant

Name: Chick-N-Joy Systems Limited

Correspondent Address: WILLIAM M MULLINEAUX
ASTOR WEISS KAPLAN & MANDEL LLP
200 SOUTH BROAD STREET THE BELLEVUE, SUITE 600
PHILADELPHIA PA , 19102
UNITED STATES

Correspondent e-mail: mmullineaux@astorweiss.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
CHICK-N-JOY	Cancellation Pending	<u>78508997</u>	<u>3567736</u>
Plaintiff(s)			

Name: Jollibee Foods Corporation

Correspondent Address: LESLIE BERTAGNOLLI
BAKER & MCKENZIE LLP
300 EAST RANDOLPH STREET, SUITE 5000
CHICAGO IL , 60601
UNITED STATES

Correspondent e-mail: leslie.bertagnolli@bakermckenzie.com , john.filosa@bakermckenzie.com , tally.george@bakermckenzie.com , Meri.McLaughlin@bakermckenzie.com

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	May 16, 2013	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	May 17, 2013	Jun 26, 2013
3	PENDING, INSTITUTED	May 17, 2013	
4	ANSWER	Jun 25, 2013	
5	STIP FOR EXT	Mar 14, 2014	
6	EXTENSION OF TIME GRANTED	Mar 14, 2014	

EXHIBIT 2

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,567,736

Registered Jan. 27, 2009

**SERVICE MARK
PRINCIPAL REGISTER**

CHICK-N-JOY

CHICK-N-JOY SYSTEMS LIMITED (CANADA
CORPORATION)

4449 KINGSTON ROAD

TORONTO, ONTARIO, CANADA M1E 2N7

FOR: RESTAURANT SERVICES, TAKE-OUT RES-
TAURANT SERVICES, IN CLASS 43 (U.S. CLS. 100
AND 101).

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF CANADA REG. NO. TMA244314,
DATED 5-2-1980, EXPIRES 5-2-2010.

SER. NO. 78-508,997, FILED 11-1-2004.

DAYNA BROWNE, EXAMINING ATTORNEY

EXHIBIT 3

ESTTA Tracking number:

ESTTA538298

Filing date:

05/16/2013IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Jollibee Foods Corporation		
Entity	Corporation	Citizenship	PHILIPPINES
Address	10th Floor, Jollibee Plaza Building F. Ortigas Jr. Avenue, Ortigas Center Pasig City, 1600 PHILIPPINES		

Attorney information	Leslie Bertagnolli Baker & McKenzie LLP 300 East Randolph Street Suite 5000 Chicago, IL 60601 UNITED STATES leslie.bertagnolli@bakermckenzie.com, tally.george@bakermckenzie.com, Meri.McLaughlin@bakermckenzie.com Phone:312-861-8000
----------------------	--

Registration Subject to Cancellation

Registration No	3567736	Registration date	01/27/2009
International Registration No.	NONE	International Registration Date	NONE
Registrant	Chick-N-Joy Systems Limited 4449 Kingston Road Toronto, Ontario, M1E 2N7 CANADA		

Goods/Services Subject to Cancellation

Class 043. All goods and services in the class are cancelled, namely: RESTAURANT SERVICES, TAKE-OUT RESTAURANT SERVICES
--

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Jollibee - Petition for Cancellation of CHICK-N-JOY.pdf(696907 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/MTGeorge/
Name	M Tally George
Date	05/16/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Registrant: Chick-N-Joy Systems Limited)	
)	
Registration No.: 3567736)	
)	
Registration Date: January 27, 2009)	
)	
Mark: CHICK-N-JOY)	
)	
_____)	Cancellation No. _____
Jollibee Foods Corporation,)	
)	
Petitioner,)	
)	
v.)	
)	
Chick-N-Joy Systems Limited)	
)	
Registrant.)	
_____)	

PETITION FOR CANCELLATION

Jollibee Foods Corporation, a company incorporated in the Philippines with its principal place of business at 10th Floor, Jollibee Plaza Building, F. Ortigas Jr. Avenue, Ortigas Center Pasig City PHILIPPINES 1600 ("Petitioner"), believes it will be damaged by continued registration of U.S. Registration No. 3567736 for CHICK-N-JOY, and therefore petitions to cancel same. Chick-N-Joy Systems Limited, a Canadian company, located at 4449 Kingston Road Toronto, Ontario CANADA M1E 2N7 ("Registrant") registered CHICK-N-JOY on January 27, 2009. Registration No. 3567736 covers "restaurant services, take-out restaurant services" in Class 43.

As grounds for cancellation, Petitioner alleges that:

1. Petitioner is a well-known provider of restaurant goods and services to customers globally.

2. Petitioner has since at least as early as 1998 provided goods and/or services, throughout the United States under the trademark CHICKENJOY ("Petitioner's Use").
3. In the United States, Petitioner is the current owner of a valid and existing registration for CHICKENJOY, Registration No. 3949145, which registered under Section 1(a), on April 19, 2011, covering "prepared dishes primarily containing chicken cooked Filipino-style, sold only in Jollibee's stores," in Class 29 ("Petitioner's Registration").
4. In the United States, Petitioner is the current owner of a pending application for a CHICKENJOY mark, Application No. 85524814 ("Petitioner's Application"), covering "services for providing food and drink, and restaurant services, namely, providing prepared dishes primarily containing chicken cooked Filipino-style, and Filipino-style beverages, sold only in Jollibee's stores," in Class 43.
5. Petitioner's Application and Petitioner's Registration remain valid and owned in the name of Petitioner.
6. Registrant's Registration No. 3567736 has been cited under Section 2(d) as a bar to registration of Petitioner's Application No. 85524814.
7. Petitioner has standing to bring this cancellation action.
8. Registrant's Registration No. 3567736 for CHICK-N-JOY was registered on January 27, 2009.
9. Registrant's Registration No. 3567736 covers "restaurant services, take-out restaurant services" services in Class 43.
10. The application resulting in Registrant's Registration No. 3567736 was filed on an intent to use or Section 1(b) basis, and a Notice of Allowance was issued on December 27, 2005.

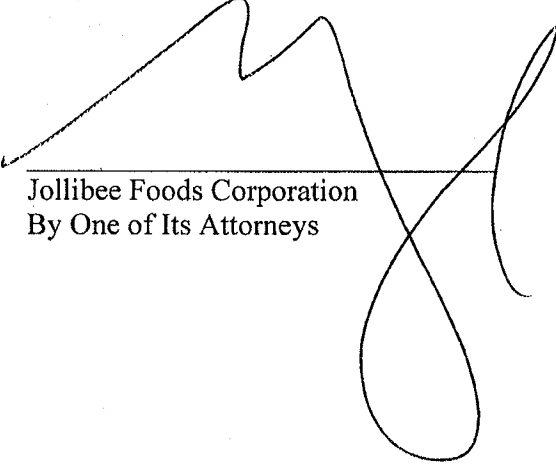
11. Registrant did not file any proof of use in U.S. commerce for CHICK-N-JOY in the three year Notice of Allowance period.
12. The intent to use basis for the application resulting in Registrant's Registration No. 3567736 was deleted, and the application amended to a Section 44(e) basis only, as of December 23, 2008.
13. Registrant did not file any proof of use in U.S. commerce for CHICK-N-JOY prior to issuance of its Registration No. 3567736 on January 27, 2009.
14. Registrant's Registration No. 3567736 was not and is not based on use in U.S. commerce.
15. Upon information and belief, Registrant did not use its mark in U.S. commerce within the three years following the issuance of its Registration No. 3567736 on January 27, 2009.
16. Upon information and belief, Registrant has not used its mark in U.S. commerce during the three years preceding the date of this Petition for Cancellation.
17. Registrant has abandoned its CHICK-N-JOY mark in the U.S.
18. The continued registration of Registrant's CHICK-N-JOY mark creates statutory rights in Registrant in violation and derogation of the rights of Petitioner, resulting in harm, detriment and damage to Petitioner by denying and blocking Petitioner's Application from proceeding to registration.

WHEREFORE, Petitioner Jollibee Foods Corporation prays that Registration No. 3567736 be cancelled, and that this Petition for Cancellation be sustained in Petitioner's favor.

Please charge the statutory filing fee of \$300.00, as well as any shortfall, missing or excess fee to Deposit Account No. 501-649, in the name of undersigned Attorneys for Petitioner.

Respectfully submitted,

Date: May 16, 2013



Jollibee Foods Corporation
By One of Its Attorneys

BAKER & McKENZIE LLP
Leslie Bertagnolli
M. Tally George
300 E. Randolph Street, Suite 5000
Chicago, IL 60601
Leslie.Bertagnolli@bakermckenzie.com
Tally.George@bakermckenzie.com
Telephone: 312-861-8000
Facsimile: 312-698-2937

PROOF OF FILING AND SERVICE

The undersigned hereby certifies that the foregoing **PETITION FOR CANCELLATION** was filed via ESTTA and served upon Registrant via the United States Postal Service, as first class mail, postage prepaid, in an envelope addressed as follows:

Chick-N-Joy Systems Limited
4449 Kingston Road
Toronto, Ontario M1E 2N7
CANADA

and

Kyle T. Peterson
PATTERSON, THUENTE, SKAAR & CHRISTENSEN,
80th South 8th Street
4800 IDS CENTER
Minneapolis, MINNESOTA 55402

this 16th day of May 2013.

/MTGeorge/
M. Tally George

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Mark: CHICKENJOY

CHICKENJOY

US Serial Number: 78773490
US Registration Number: 3949145
Register: Principal
Mark Type: Trademark
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.
Status Date: Apr. 19, 2011
Publication Date: Nov. 10, 2009

Application Filing Date: Dec. 14, 2005

Registration Date: Apr. 19, 2011

Notice of Allowance Date: Feb. 02, 2010

Mark Information

Mark Literal Elements: CHICKENJOY
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets () indicate deleted goods/services.
- Double parentheses (()) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks * identify additional (new) wording in the goods/services.

For: Prepared dishes primarily containing chicken cooked Filipino-style, sold only in Jollibee's stores

International Class(es): 029 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 01, 1980

Use In Commerce: May 28, 1998

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Jollibee Foods Corporation
Owner Address: #10 Emerald Avenue, Ortigas Center
7th Floor, Jollibee Plaza Building,
Pasig City 1600
PHILIPPINES
Legal Entity Type: CORPORATION
State or Country Where Organized: PHILIPPINES

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Leslie Bertagnolli

Docket Number: 05-1132

Correspondent

Correspondent Name/Address: LESLIE BERTAGNOLLI
BAKER & MCKENZIE LLP
ONE PRUDENTIAL PLZ
130 E RANDOLPH DR STE 3500
CHICAGO, ILLINOIS 60601

UNITED STATES

Phone: 312-861-8617

Fax: 312-698-2064

Domestic Representative

Domestic Representative Leslie Bertagnoli
Name:

Phone: 312-861-8617

Fax: 312-698-2064

Prosecution History

Date	Description	Proceeding Number
Apr. 19, 2011	REGISTERED-PRINCIPAL REGISTER	
Mar. 15, 2011	NOTICE OF ACCEPTANCE OF STATEMENT OF USE MAILED	
Mar. 14, 2011	LAW OFFICE REGISTRATION REVIEW COMPLETED	66121
Mar. 14, 2011	ASSIGNED TO LIE	66121
Feb. 23, 2011	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Feb. 22, 2011	STATEMENT OF USE PROCESSING COMPLETE	76985
Jan. 31, 2011	USE AMENDMENT FILED	76985
Feb. 22, 2011	CASE ASSIGNED TO INTENT TO USE PARALEGAL	76985
Jan. 31, 2011	TEAS STATEMENT OF USE RECEIVED	
Aug. 04, 2010	NOTICE OF APPROVAL OF EXTENSION REQUEST MAILED	
Aug. 02, 2010	EXTENSION 1 GRANTED	98765
Aug. 02, 2010	EXTENSION 1 FILED	98765
Aug. 02, 2010	TEAS EXTENSION RECEIVED	
Feb. 02, 2010	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Jan. 05, 2010	ASSIGNED TO EXAMINER	76745
Nov. 10, 2009	PUBLISHED FOR OPPOSITION	
Oct. 21, 2009	NOTICE OF PUBLICATION	
Oct. 07, 2009	LAW OFFICE PUBLICATION REVIEW COMPLETED	76243
Oct. 03, 2009	ASSIGNED TO LIE	76243
Oct. 02, 2009	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 11, 2009	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Sep. 10, 2009	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Sep. 10, 2009	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 10, 2009	NON-FINAL ACTION MAILED	
Mar. 10, 2009	NON-FINAL ACTION WRITTEN	60785
Feb. 06, 2009	LIE CHECKED SUSP - TO ATTY FOR ACTION	76539
Aug. 05, 2008	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	76539
Feb. 05, 2008	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	76539
Aug. 01, 2007	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	76539
Aug. 01, 2007	ASSIGNED TO LIE	76539
Jan. 18, 2007	LETTER OF SUSPENSION MAILED	
Jan. 17, 2007	SUSPENSION LETTER WRITTEN	60785
Dec. 20, 2006	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Dec. 19, 2006	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Dec. 19, 2006	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 19, 2006	NON-FINAL ACTION MAILED	
Jun. 17, 2006	NON-FINAL ACTION WRITTEN	60785
Jun. 13, 2006	ASSIGNED TO EXAMINER	60785
Jun. 07, 2006	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	67287
May 09, 2006	PAPER RECEIVED	

Dec. 20, 2005 NEW APPLICATION ENTERED IN TRAM

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Mar. 14, 2011

Generated on: This page was generated by TSDR on 2013-05-16 12:38:04 EDT

Mark: CHICKENJOY

CHICKENJOY

US Serial Number: 85524814

Application Filing Date: Jan. 25, 2012

Register: Principal

Mark Type: Service Mark

Status: A final Office action refusing registration has been sent (issued) because the applicant neither satisfied nor overcame all requirements and/or refusals previously raised. The applicant may respond by filing (1) a request for reconsideration; and/or (2) an appeal to the Trademark Trial and Appeal Board. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Nov. 21, 2012

Mark Information

Mark Literal Elements: CHICKENJOY

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

Claimed Ownership of US 3949145

Registrations:

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets ([]) indicate deleted goods/services.
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks * identify additional (new) wording in the goods/services.

For: services for providing food and drink, and restaurant services, namely, providing prepared dishes primarily containing chicken cooked Filipino-style, and Filipino-style beverages, sold only in Jollibee's stores

International Class(es): 043 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: Yes	Currently ITU: Yes	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Jollibee Foods Corporation

Owner Address: 10th Floor, Jollibee Plaza Building
F. Ortigas Jr. Avenue, Ortigas Center
Pasig City 1600
PHILIPPINES

Legal Entity Type: CORPORATION

State or Country Where Organized: PHILIPPINES

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Tally George

Docket Number: 120129

Attorney Primary Email chiusptomall@bakermckenzie.com

Attorney Email Yes

Address:

Authorized:

Correspondent

Correspondent TALLY GEORGE
Name/Address: BAKER & MCKENZIE LLP
300 E RANDOLPH ST STE 5000
CHICAGO, ILLINOIS 60601-5014
UNITED STATES

Phone: 312-861-8000

Fax: 312-698-2937

Correspondent e-mail: chiusptomail@bakermckenzie.com tally.george@bakermckenzie.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Nov. 21, 2012	NOTIFICATION OF FINAL REFUSAL EMAILED	
Nov. 21, 2012	FINAL REFUSAL E-MAILED	
Nov. 21, 2012	FINAL REFUSAL WRITTEN	76582
Oct. 27, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Oct. 26, 2012	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Oct. 26, 2012	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 26, 2012	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 26, 2012	NON-FINAL ACTION E-MAILED	6325
Apr. 26, 2012	NON-FINAL ACTION WRITTEN	76582
Apr. 18, 2012	ASSIGNED TO EXAMINER	76582
Jan. 31, 2012	NOTICE OF PSEUDO MARK MAILED	
Jan. 28, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 28, 2012	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: SMITH, BRIDGETT G

Law Office Assigned: LAW OFFICE 115

File Location

Current Location: TMO LAW OFFICE 115 - EXAMINING
ATTORNEY ASSIGNED

Date in Location: Nov. 21, 2012

EXHIBIT 4

Registrant: Chick-N-Joy Systems Limited)
 Registration No.: 3567736)
 Registration Date: January 27, 2009)
 Mark: CHICK-N-JOY)

Cancellation No. 92057222

V.

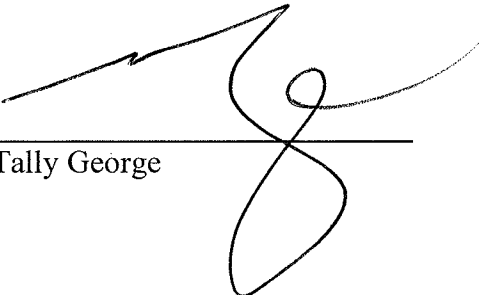
Registrant.

1

9. On Friday, March 7, 2014, after several reminders to Registrant's counsel, Registrant provided incomplete responses to Petitioner's Interrogatories with four pages of documents.
10. On March 7, 2014, Registrant's counsel stated that Registrant would serve its responses to document requests during the weekend or on the following Monday, March 10, and supplement its interrogatory responses the week of March 10 to March 14. (Ex. A, March 7, 2014 email from M. Mullineaux.)
11. By March 14, 2014, Registrant had not provided any further discovery responses, so Petitioner obtained Registrant's consent to a 30-day extension of the trial deadlines.
12. On March 14, 2014, Registrant's Request for Extension was filed and granted by the Board. (Ex. B, TTAB Docket 5, Motion For Extension; Ex. C, TTAB Docket 6, Order Granting Motion.)
13. On March 18, 2014, after further prompting, Registrant provided its remaining responses to discovery, consisting of amended responses to interrogatories, and responses to document requests, with 10 pages of documents, for a total document production of 14 pages of documents.
14. In his March 18, 2014 email that accompanied the responses, Registrant's counsel stated that Registrant has no other documents in its possession pertaining to Petitioner's discovery requests, other than the 14 pages provided. (Ex. D, March 18, 2014 email from M. Mullineaux.)
15. Attached as Exhibit 6 to Petitioner's Motion is a true and correct copy of Registrant's Certificate of Registration No. 3949145 for CHICKENJOY.
16. Attached as Exhibit 7 to Petitioner's Motion is a true and correct copy of the Trademark Status and Document Retrieval file history and November 12, 2012 office action for Registrant's Application No. 85524814.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: April 18, 2014



M. Tally George

EXHIBIT A

George, Tally

From: Mark Mullineaux <mmullineaux@astorweiss.com>
Sent: Friday, March 07, 2014 4:16 PM
To: George, Tally; Bertagnolli, Leslie A
Cc: CHICK-N-JOY (chicknjoy@rogers.com)
Subject: Answer to discovery
Attachments: Trademark Registration pg.1.jpeg; Trademark registration pg.2.jpeg; Trademark Registration pg.3.jpeg; CHICK-N-JOY bag trademark used Oklahoma.pdf; answers interrogos 3 7 14.pdf

Counsel,

Attached is Chick-N-Joy's answer to interrogatory. My client plans to supplement the responses next week.

The response to the request for documents will be served this weekend or on Monday,

Best,

Mark

Mark Mullineaux
Astor Weiss Kaplan & Mandel, LLP
200 South Broad Street Suite 600
Philadelphia, PA 19102
(215) 893-4956
(215) 790-0509 fax

This electronic mail transmission and any accompanying documents contain information belonging to the sender which may be confidential and legally privileged. This information is intended only for the use of the individual or entity to whom this electronic mail transmission was sent as indicated above. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please call 215-790-0100 to let me know and delete the message. Thank you.

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding.	92057222
Applicant	Plaintiff Jollibee Foods Corporation
Other Party	Defendant Chick-N-Joy Systems Limited
Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?	Yes

**Motion for an Extension of Answer or Discovery or Trial Periods With
Consent**

The Close of Plaintiff's Trial Period is currently set to close on 04/22/2014. Jollibee Foods Corporation requests that such date be extended for 30 days, or until 05/22/2014, and that all subsequent dates be reset accordingly.

Time to Answer :	CLOSED
Deadline for Discovery Conference :	CLOSED
Discovery Opens :	CLOSED
Initial Disclosures Due :	CLOSED
Expert Disclosure Due :	CLOSED
Discovery Closes :	CLOSED
Plaintiff's Pretrial Disclosures :	04/07/2014
Plaintiff's 30-day Trial Period Ends :	05/22/2014
Defendant's Pretrial Disclosures :	06/06/2014
Defendant's 30-day Trial Period Ends :	07/21/2014
Plaintiff's Rebuttal Disclosures :	08/05/2014
Plaintiff's 15-day Rebuttal Period Ends :	09/04/2014

The grounds for this request are as follows:

- *Parties are unable to complete discovery/testimony during assigned period*

Jollibee Foods Corporation has secured the express consent of all other parties to this proceeding for the extension and resetting of dates requested herein.

Jollibee Foods Corporation has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,

/MTGeorge/

M. Tally George

leslie.bertagnolli@bakermckenzie.com, john.filosa@bakermckenzie.com, tally.george@bakermckenzie.com,

Meri.McLaughlin@bakermckenzie.com

mmullineaux@astorweiss.com

03/14/2014

EXHIBIT C

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

March 14, 2014

PROCEEDING NO. 92057222
Jollibee Foods Corporation

v.

Chick-N-Joy Systems Limited

MOTION TO EXTEND GRANTED

By the Board:

Jollibee Foods Corporation's consent motion to extend,
filed Mar 14, 2014, is granted. Dates are reset as set out in
the motion.

.oOo.

EXHIBIT D

George, Tally

From: Mark Mullineaux <mmullineaux@astorweiss.com>
Sent: Tuesday, March 18, 2014 11:40 AM
To: George, Tally; Bertagnolli, Leslie A
Subject: FW: BAG INVOICES
Attachments: 2005 Duro Bag purchase. USA.pdf; 2011 Tulsack Bag purchase. USA.pdf; additional production docs 3 18 14.pdf

Counsel,

Attached is Chick-N-Joy System's Additional Production of Documents in response to Petitioner's Request for Documents and Interrogatories. We have produced all documents and information requested in discovery that is in the possession of my client. We will continue to try to obtain the additional information from the manufacturers and middleman of the bags.

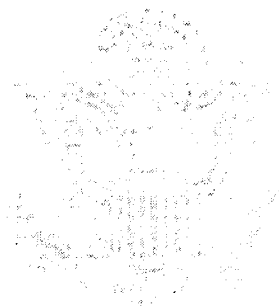
Mark

Mark Mullineaux
Astor Weiss Kaplan & Mandel, LLP
200 South Broad Street Suite 600
Philadelphia, PA 19102
(215) 893-4956
(215) 790-0509 fax

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EXHIBIT 5

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

To avoid CANCELLATION of the registration, the owner of the registration must submit a declaration of continued use or excusable non-use between the fifth and sixth years after the registration date. (See next page for more information.) Assuming such a declaration is properly filed, the registration will remain in force for ten (10) years, unless terminated by an order of the Commissioner for Trademarks or a federal court. (See next page for information on maintenance requirements for successive ten-year periods.)



John Doll

Acting Director of the United States Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

Requirements in the First Ten Years*

What and When to File:

- First Filing: A Declaration of Continued Use (or Excusable Non-use), filed between the 5th and 6th years after the registration date. (See 15 U.S.C. §1058; 37 C.F.R. §2.161.)
- Second Filing: A Declaration of Continued Use (or Excusable Non-use) and an Application for Renewal, filed between the 9th and 10th years after the registration date. (See 15 U.S.C. §1058 and §1059; 37 C.F.R. §2.161 and 2.183.)

Requirements in Successive Ten-Year Periods*

What and When to File:

- A Declaration of Continued Use (or Excusable Non-use) and an Application for Renewal, filed between each 9th and 10th-year period after the date when the first ten-year period ends. (See 15 U.S.C. §1058 and §1059; 37 C.F.R. §2.161 and 2.183.)

Grace Period Filings*

There is a six-month grace period for filing the documents listed above, with payment of an additional fee.

The U.S. Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements. Therefore, you should contact the USPTO approximately one year prior to the deadlines set forth above to determine the requirements and fees for submission of the required filings.

NOTE: Electronic forms for the above documents, as well as information regarding current filing requirements and fees, are available online at the USPTO web site:

www.uspto.gov

**YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT
FILE THE DOCUMENTS IDENTIFIED ABOVE DURING THE
SPECIFIED TIME PERIODS.**

*Exception for the Extensions of Protection under the Madrid Protocol:
The holder of an international registration with an extension of protection to the United States must file, under slightly different time periods, a Declaration of Continued Use (or Excusable Non-use) at the USPTO. See 15 U.S.C. §1141k; 37 C.F.R. §7.36. The renewal of an international registration, however, must be filed at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol. See 15 U.S.C. §1141j; 37 C.F.R. §7.41.

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,567,736

Registered Jan. 27, 2009

SERVICE MARK
PRINCIPAL REGISTER

CHICK-N-JOY

CHICK-N-JOY SYSTEMS LIMITED (CANADA
CORPORATION)

440 KINGSTON ROAD

TORONTO, ONTARIO, CANADA M1E 2N7

FOR: RESTAURANT SERVICES, TAKE-OUT RES-
TAURANT SERVICES, IN CLASS 43 (U.S. CLS. 100
AND 101)

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF CANADA REG. NO. TMA244314,
DATED 5-2-1980, EXPIRES 5-2-2010

SER. NO. 78-508,997, FILED 11-1-2004.

DAY & BROWNIE EXAMINING ATTORNEY

© 2011 Chick-N-Joy Systems Limited. All Rights Reserved.
The Chick-N-Joy name, design and related marks
are trademarks of Chick-N-Joy Systems Limited.



This bag is made with 100%
recycled fibre with a minimum
of 10% post consumer content.
15

creativebag.com

CHICK
N-JOY



STANDARD PRODUCTS COMPANY, INC

7600 Empire Drive
Florence, KY 41042
PHONE: (859) 371-2150
(800) 879-3876
FAX: (859) 371-4736

March 3, 2005

Mr. George Kastanas
Chick-n-Joy Restaurants
4449 Kingston Road
Toronto, Ontario M1E2N7

Dear Mr. Kastanas:

We are please to quote your company on the following bags. Prices quoted are based upon delivery to the border.
You will be responsible for all taxes, duties, and fees associated with crossing the border.

<u>Bag Size</u>	<u>Bale Pack</u>	<u>Quantity</u>	<u>Price per Bale</u>
1/6 Bbl 70# Kraft Handles Up Sack 2 colors, 1sides Minimal Ink Coverage	400	50M	\$33.50/Bale

Above pricing is based upon Standard Inks. Pricing is subject to change upon receipt of Artwork.
Plate Cost will be \$183.60. Proof charges are \$50 for Black & White, and \$75 per color for color key proof.
Art charges are billed at our cost of \$45 per hour. Custom Art or Custom Art Proofs are billed at cost, with a 1 hour minimum.

Lead-Time is 4-6 weeks after final art approval. The above quotation is guaranteed through April 2, 2005.

Thank you again for the opportunity to quote your company. If you should have any questions please do not hesitate to call.

Sincerely,

Wanda Tepe

MANUFACTURING PLANTS
BROWNSVILLE, TX · COVINGTON, KY · FLORENCE, KY · HUDSON, WI
RICHMOND, VA · TAMPA, FL · RICHWOOD, KY · RIO BRAVO, MEXICO



860 Steeprock Drive
Toronto, ON M3J 2X2
Tel.: 416.631.6444
Toll Free: 1-800-263-1418
Fax: 416.631.6424
G. S. T. #: 105206148RT0001

INVOICE

Invoice Number

356791

Invoice Date

7/14/2005

Page

Page 1 of 1

Bill to:

CHICK'N JOY
4449 KINGSTON ROAD
WEST HILL
ON
M1E 2N6

Ship to:

CHICK'N JOY
4449 KINGSTON ROAD
WEST HILL
ON
M1E 2N6

Customer#	Date Shipped	Order #	Slp#	Terms	Po Number
CHICKN	7/05/05	357180	002	NET 30	
Item Code	Description	Qty Shp	Price	Extension	
CB1/6BBLCHICK	1/6 BBL-70#KRFT HNDLE BAG PTD'CHICK'N JO	51,200	0.17	8,704.00	
	PTD 185 RED & 430 GRAY - 2 SIDES				
	(PACKED 400/BALE)				
9	DELIVERY / TOKIWA	1	145.00	145.00	
	1/2 PRODUCT SHIPPED - BALANCE				
	WILL BE HELD IN OUR WAREHOUSE				
	AS CUSTOMER OWNED GOODS				
				Subtotal	8,849.00
				GST	619.43
				RST	
				Invoice Total	9,468.43

pd. Aug 20/05
Aug. 25/05.
0313.
pd By H.O.

2% Interest charge per month on overdue accounts

Customer Copy



1100 Lodestar Rd.
Downsview, Ontario
M3J 2Z4
(416) 631-6444
Toll Free: 1-800-263-1418
Fax (416) 631-6424
GST#: 105206148RT0001

INVOICE

Invoice Number
0440328-IN
Invoice Date
08/05/2009
Page

Page 1 of 1
Entered By
MM

SOLD TO:

Chick'N Joy
4449 Kingston Road
West Hill, ON M1E 2N6

SHIP TO:

SUPERIOR FOODS
18 MEDULLA AVE
ATTN SEAN-416-646-0207
Etobicoke, ON M8Z 5L5

Customer No.	Order #	Slp#	Terms	Currency *	P/O Number		
CHICKN	0437317	0002	Net 30 Days	CAD	TEL		
Item Code	Description	Ordered	Shipped	B/O	Price	Extension	
CHICKNJ0901	1/6 BBL PTD' CHICK'N JOY-400/BALE 70# KRAFT HANDLED BAG 4 SIDES PMS 185 RED; WHITE; & GREENINK COLOUR TO FOLLOW (06/09)	50,000	48,600 160	0	0.1700	8,262.00	
ISPLATES	PLATE COSTS NOT PST EXEMPT 3 PLATES @ \$300.00EACH 4 SKIDS X18CS EACH = 72 CS (@300)=21,600 UNITS BALANCE OF 5 SKIDS TOTALLING 27,000 UNITS TO BE HELD OUR WAREHOUSE AS CUSTOMER OWNED GOODS	1	1	0	900.0000	900.00	
						Net Invoice:	9,162.00
						Less Discount:	0.00
						Freight:	153.25
						G.S.T.:	465.76
						P.S.T.:	72.00
						Invoice Total:	9,853.01

ORDER ONLINE AT WWW.CREATIVEBAG.COM

less Otherwise Stated

Interest Charge Per Month On Overdue Accounts

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creative bag

File, Mailbox

Search Web

Print, Forward

Compose

Search results

Back, Forward, Stop

Delete

Move

Spam

More

Collapse All

X

Inbox (784)

Drafts (7)

Sent

Spam

Trash (3)

Folders (704)

Recent

Messenger

Contacts

Calendar

Notepad

Chick n Joy (2)

Bernie Shapiro

To Me

Hi George

Here are a few pictures of the new bags
Notice the handles on this bag are on the inside

Also we can do 3 colours up to 100% ink coverage and print anywhere on the bag

Also here are the die lines

Let me know if they work

25,000 bags will cost you \$209/1000 with Free plates

Bernie

Bernie Shapiro

Creative Bag Co. Ltd. | 1100 Lodestar Road, Toronto, ON M3J 2Z4
Tel: (416) 631-6444 ext 227 | Toll-Free: 1-800-263-1418 | Fax: (416) 631-0738

bernie@creativebag.com | www.creativebag.com

Please consider the environment before printing this e-mail.

4 Attachments View all Download all

BAG-ART 12X7X1....pdf

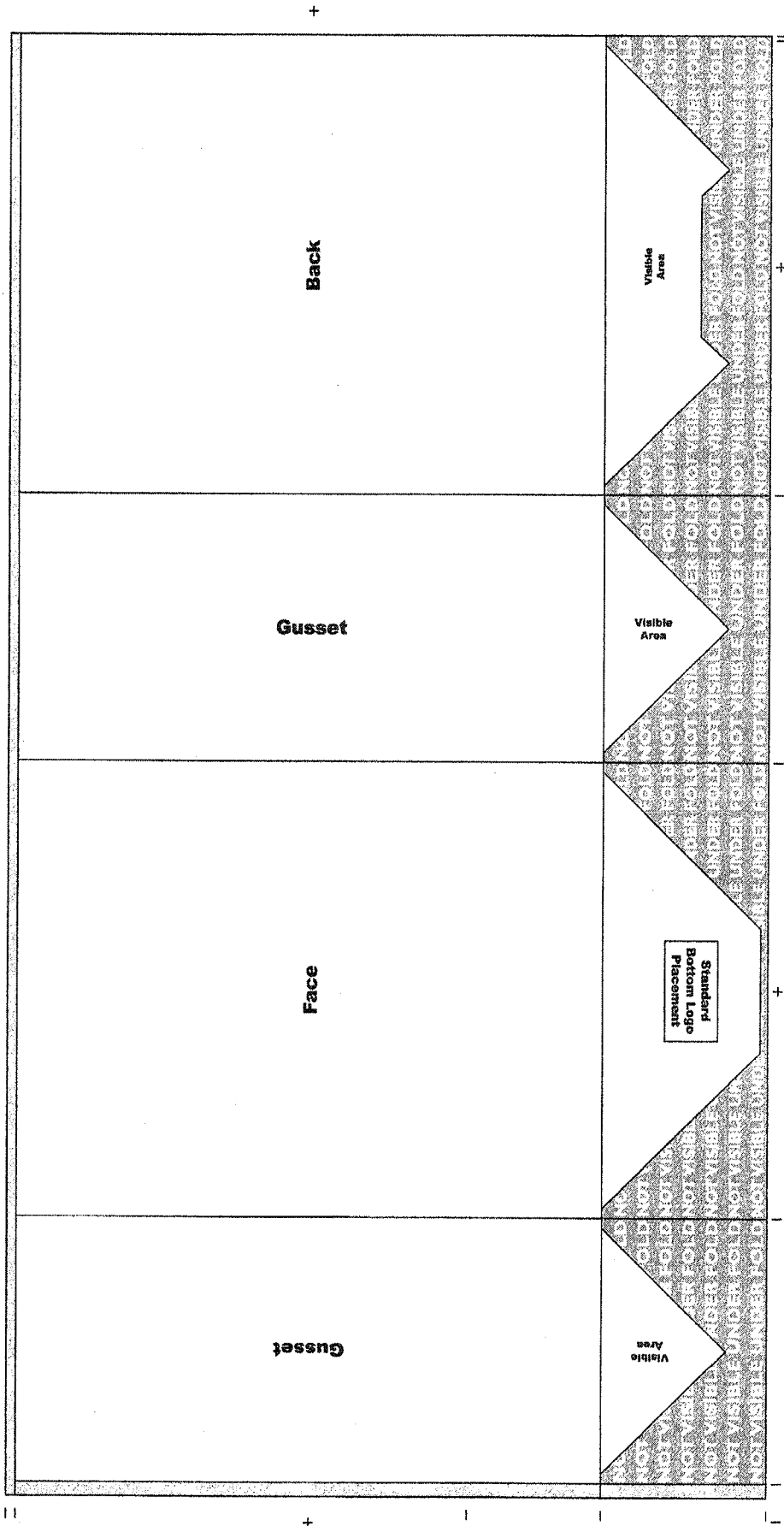
Download

Reply, Reply All or Forward | More

Me Snippet unavailable

Mark, this is when we changed Bag companies from
Kentucky to Oklahoma

Contact qanda@bag-art.com with questions.



12 x 7 x 15.75 Serrated Edge Shopping Bag Template

Please see the Line Piece Art Guidelines before beginning. Bag height on template is shorter than actual finished bag height. This is not an error. It is a requirement allowing for photographic plate thickness and cylinder mounting. Please work in inches/specified sized colors. The template is for design work. Toggle information by visibility off for clear view of template outlines for design work.



1100 Lodestar Rd.
Downsview, Ontario
M3J 2Z4
(416) 631-6444
Toll Free: 1-800-263-1418
Fax (416) 631-6424
GST#: 105206148RT0001

INVOICE

Invoice Number
0459617-IN
Invoice Date
08/03/2011
Page

Page 1 of 1
Entered By
RIC

SOLD TO:

Chick'N Joy
4449 Kingston Road
West Hill, ON M1E 2N6

SHIP TO:

SUPERIOR FOODS
18 MEDULLA AVE
ATTN: LEO 416-646-0207
Etobicoke, ON M8Z 5L5

Customer No.	Order #	Slp#	Terms	Currency *	P/O Number	
CHICKN	0458194	0002	Net 30 Days	CAD	GEORGE	
Item Code	Description	Ordered	Shipped	B/O	Price	Extension
CHICKN1101	12X7X15.75 PTD ' CHICK N' JOY ' 250/BALE VERSA KRAFT FLAT HANDLE 100% INK COVERAGE PMS-186 RED & BLACK INKS (06/11)	25,000	24,750 99cs 60 + Superior bags	0	0.2400	5,940.00
<div>Paid By G. Visa.</div> <div><div><div>(S)</div><div>Bag</div><div>Freight</div><div>H.S.T.</div><div>\$</div></div><div><div>2970.00</div><div>38.00</div><div>\$ 393.58</div><div><div>3401.59</div></div></div><div><div>(P)</div><div>1485.00</div><div>38.49</div><div>\$ 196.79</div><div><div>1719.75</div></div></div><div><div>(W)</div><div>1485.00</div><div>38.49</div><div>\$ 196.79</div><div><div>1720.77</div></div></div></div> <div><div><div>\$</div><div>1720.28</div></div><div><div>\$</div><div>1720.28</div></div></div>						
Net Invoice:						5,940.00
Less Discount:						0.00
Freight:						115.00
H.S.T.:						787.15
ORDER ONLINE AT WWW.CREATIVEBAG.COM						Invoice Total: 6,842.15 TERM

Unless Otherwise Stated

*Unless Otherwise Stated

2% Interest Charge Per Month On Overdue Accounts

Please call for authorization before returning any product by courier



1100 Lodestar Rd.
Downsview, Ontario
M3J 2Z4
(416) 631-6444
Toll Free: 1-800-263-1418
Fax (416) 631-6424
GST#: 105206148RT0001

INVOICE

Invoice Number
0471137-IN
Invoice Date
07/10/2012
Page

Page 1 of 1
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RIC

SOLD TO:

Chick'N Joy
4449 Kingston Road
West Hill, ON M1E 2N6

SHIP TO:

SUPERIOR FOODS
18 Medulla Ave
Attn: Leo (416)-646-0207
Etobicoke, ON M8Z 5L5

Customer No.	Order #	Slp#	Terms	Currency *		
CHICKN	0469339	0002	Net 30 Days	CAD		
Item Code	Description	Ordered	Shipped	B/O	Price	Extension
CHICKN1101	12X7X15.75 PTD ' CHICK N' JOY ' VERSA KRAFT FLATHANDLE 100% INK COVERAGE PMS-186 RED & BLACKINKS (06/11)	25,000	25,000	0	0.2400	6,000.00
				Net Invoice:	6,000.00	
				Less Discount:	0.00	
				Freight:	80.00	
				H.S.T.:	790.40	
				Invoice Total:	6,870.40	
					TERM	

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M3J 2Z4
(416) 631-6444
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Fax (416) 631-6424
GST#: 105206148RT0001

INVOICE

Invoice Number
0471137-IN
Invoice Date
07/10/2012
Page

Page 1 of 1
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RIC

SOLD TO:

Chick'N Joy
4449 Kingston Road
West Hill, ON M1E 2N6

SHIP TO:

SUPERIOR FOODS
18 Medulla Ave
Attn: Leo (416)-646-0207
Etobicoke, ON M8Z 5L5

Customer No.	Order #	Slip#	Terms	Currency *		
CHICKN	0469339	0002	Net 30 Days	CAD		
Item Code	Description	Ordered	Shipped	B/O	Price	Extension
CHICKN1101	12X7X15.75 PTD ' CHICK N' JOY ' VERSA KRAFT FLAT HANDLE 100% INK COVERAGE PMS-186 RED & BLACK INKS (06/11)	25,000	25,000	0	0.2400	6,000.00

*Paid By
George Visa
Sept. 12*

Net Invoice: 6,000.00
Less Discount: 0.00
Freight: 80.00
H.S.T.: 790.40

ORDER ONLINE AT WWW.CREATIVEBAG.COM

Invoice Total: 6,870.40
TERM

*Unless Otherwise Stated

2% Interest Charge Per Month On Overdue Accounts

Please call for authorization before returning any product by courier



Creative Bag Co. Ltd. - Toronto
1100 Lodestar Road
Toronto, ON
M3J 2Z4
4166316444

Sold To:

Chick'N Joy
4449 Kingston Road
West Hill, ON M1E 2N6

Ship To:

SUPERIOR FOODS
18 Medulla Ave
Attn: Leo (416)-646-0207
Etobicoke, ON M8Z 5L5

Invoice

Printed: Jul-16-2013 12:57:44

Page 1 of 1

Invoice Number: 0483406-IN
Invoice Date: 07/06/2013
Entered By:
Order Number: 0481024
Order Date: 07/05/2013
Salesperson: 0002
Customer Number: CHICKN
Terms: Net 30 Days

Customer PO: George-Tel

Item Number	Alias Item	Ordered	Shipped	Back Ordered	Price	Amount
CHICKN1101		25,000	25,000	0	\$0.2500	\$6,250.00
12X7X15.75 PTD 'CHICK N' JOY'						
VERSA KRAFT FLAT HANDLE						
100% INK COVERAGE						
PMS-186 RED & BLACK INKS						
PACK 250/BALE						
(06/11)						

69.30 per case

- Handle Bags -

HST #: 105206148RT0001

ORDER ONLINE AT WWW.CREATIVEBAG.COM

Net Invoice: \$6,250.00
Less Discount: 0.00
Freight: 76.00
Sales Tax: 822.38
Invoice Total: \$7,148.38
Payment Type:
Currency: Canadian Dollar

2% Interest Charge Per Month on Overdue Accounts

Please call for authorization before returning any product by courier



To whom it may concern,

Tulsack is a leading paper bag manufacturer located in Tulsa, Ok. Tulsack has produced the paper bags for Chick-N-Joy since July 2011. Total, Tulsack has produced 100,000 bags for Chick-N-Joy's take out business.

Should you need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Jillian Cannizzaro".

Jillian Cannizzaro
TULSACK
East Regional Sales
866-960-1306

EXHIBIT 6

United States of America

United States Patent and Trademark Office

CHICKENJOY

Reg. No. 3,949,145

Registered Apr. 19, 2011

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

JOLLIBEE FOODS CORPORATION (PHILIPPINES CORPORATION)
#10 EMERALD AVENUE, ORTIGAS CENTER
7TH FLOOR, JOLLIBEE PLAZA BUILDING,
PASIG CITY 1600, PHILIPPINES

FOR: PREPARED DISHES PRIMARILY CONTAINING CHICKEN COOKED FILIPINO-STYLE,
SOLD ONLY IN JOLLIBEE'S STORES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 6-1-1980; IN COMMERCE 5-28-1998.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-773,490, FILED 12-14-2005.

PAULA MAHONEY, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office

EXHIBIT 7

Generated on: This page was generated by TSDR on 2014-04-17 22:04:30 EDT

Mark: CHICKENJOY

CHICKENJOY

US Serial Number: 85524814

Application Filing Date: Jan. 25, 2012

Register: Principal

Mark Type: Service Mark

Status: Suspension check completed. Application remains suspended.

Status Date: Nov. 20, 2013

Mark Information

Mark Literal Elements: CHICKENJOY

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

Claimed Ownership of US Registrations: 3949145

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks "*" identify additional (new) wording in the goods/services.

For: services for providing food and drink, and restaurant services, namely, providing prepared dishes primarily containing chicken cooked Filipino-style, and Filipino-style beverages, sold only in Jollibee's stores

International Class(es): 043 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: Yes	Currently ITU: Yes	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Jollibee Foods Corporation

Owner Address: 10th Floor, Jollibee Plaza Building
F. Ortigas Jr. Avenue, Ortigas Center
Pasig City 1600
PHILIPPINES

Legal Entity Type: CORPORATION

State or Country Where Organized: PHILIPPINES

Attorney/Correspondence Information

Attorney Name: Tally George
Attorney Primary Email Address: chiustptomail@bakermckenzie.com

Attorney of Record

Docket Number: 120129

Attorney Email Authorized: Yes

Correspondent

Correspondent TALLY GEORGE
Name/Address: BAKER & MCKENZIE LLP
300 E RANDOLPH ST STE 5000
CHICAGO, ILLINOIS 60601-5014
UNITED STATES

Phone: 312-861-8000

Fax: 312-698-2937

Correspondent e-mail: chiusptomail@bakermckenzie.com leslie.beragno@bakermckenzie.com
lli@bakermckenzie.com tally.george@bakermckenzie.com
nzie.com Meri.McLaughlin@bakermckenzie.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Nov. 20, 2013	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	
May 20, 2013	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
May 20, 2013	LETTER OF SUSPENSION E-MAILED	6332
May 20, 2013	SUSPENSION LETTER WRITTEN	76582
May 20, 2013	TEAS/EMAIL CORRESPONDENCE ENTERED	70884
May 20, 2013	CORRESPONDENCE RECEIVED IN LAW OFFICE	70884
May 20, 2013	ASSIGNED TO LIE	70884
May 16, 2013	TEAS REQUEST FOR RECONSIDERATION RECEIVED	
May 16, 2013	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
May 16, 2013	EX PARTE APPEAL-INSTITUTED	524814
May 16, 2013	JURISDICTION RESTORED TO EXAMINING ATTORNEY	524814
May 16, 2013	EXPORTE APPEAL RECEIVED AT TTAB	
Nov. 21, 2012	NOTIFICATION OF FINAL REFUSAL EMAILED	
Nov. 21, 2012	FINAL REFUSAL E-MAILED	
Nov. 21, 2012	FINAL REFUSAL WRITTEN	76582
Oct. 27, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Oct. 26, 2012	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Oct. 26, 2012	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 26, 2012	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 26, 2012	NON-FINAL ACTION E-MAILED	6325
Apr. 26, 2012	NON-FINAL ACTION WRITTEN	76582
Apr. 18, 2012	ASSIGNED TO EXAMINER	76582
Jan. 31, 2012	NOTICE OF PSEUDO MARK MAILED	
Jan. 28, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 28, 2012	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information	
TM Attorney: SMITH, BRIDGETT G	Law Office Assigned: LAW OFFICE 115
File Location	
Current Location: TMO LAW OFFICE 115 - EXAMINING ATTORNEY ASSIGNED	Date in Location: May 20, 2013

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Exparte Appeal

Proceeding Number: 85524814

Filing Date: May 16, 2013

Status: Pending

Status Date: May 16, 2013

Interlocutory Attorney:

Plaintiff(s)

Name: Jollibee Foods Corporation

Correspondent Address: TALLY GEORGE
BAKER & MCKENZIE LLP
300 E RANDOLPH ST STE 5000
CHICAGO IL , 60601-5014
UNITED STATES

Correspondent e-mail: leslie.bertagnolli@bakermckenzie.com , tally.george@bakermckenzie.com , Meri.McLaughlin@bakermckenzie.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
CHICKENJOY	Report Completed Suspension Check - Case Still Suspended	<u>85524814</u>	

Prosecution History			Due Date
Entry Number	History Text	Date	
1	APPEAL TO BOARD	May 16, 2013	
2	Appeal Acknowledged; Case Remanded	May 16, 2013	
3	INSTITUTED	May 16, 2013	
4	REQ FOR RECON	May 16, 2013	
5	APPLICANT CHANGE OF CORRESP ADDRESS	May 20, 2013	

To: Jollibee Foods Corporation (chiusptomail@bakermckenzie.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85524814 - CHICKENJOY - 120129
Sent: 11/21/2012 2:29:31 PM
Sent As: ECOM115@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85524814

MARK: CHICKENJOY

85524814

CORRESPONDENT ADDRESS:

TALLY GEORGE
BAKER & MCKENZIE LLP
300 E RANDOLPH ST STE 5000
CHICAGO, IL 60601-5014

CLICK HERE TO RESPOND
<http://www.uspto.gov/trademarks/te>

APPLICANT: Jollibee Foods Corporation

CORRESPONDENT'S REFERENCE/DOCKET NO :
120129

CORRESPONDENT E-MAIL ADDRESS:
chiusptomail@bakermckenzie.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 11/21/2012

THIS IS A FINAL ACTION.

This letter responds to the applicant's communication filed on April 15, 2009. The examining attorney has considered the applicant's arguments carefully but found them unpersuasive; therefore, the likelihood of confusion refusal is maintained and made FINAL.

Registration of the applied-for mark was refused because of a likelihood of confusion with the mark in U.S. Registration No. 3567736. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.*

I. Likelihood of Confusion

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

A. Similarity of the Marks

The applicant has applied to register the mark CHICKENJOY in standard character form. The registered mark is CHICK-N-JOY also in standard character form. Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).
form.

The question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods and/or services they identify come from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 201, 175 USPQ 558, 558-59 (C.C.P.A. 1972); TMEP §1207.01(b). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *See Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 1329-30, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000); *Visual Info. Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179, 189 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537, 540-41 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b).

The marks are essentially phonetic equivalents and thus sound similar. Similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b)(iv).

Additionally, the Examiner argues that based on the fact that the mark is based on Section 44(e), absent use, is not a fair basis to find likelihood of confusion. This is not supported by any legal precedence. The Applicant references *Dawn Donut Co. v. Day*, 171 USPQ 453 (10th Cir. 1971); *McCarthy on Trademarks*, Sec. 29:21 to support its proposition; however, these resources address the use of Section 44(e) registration in suggesting that certain goods or services are of a type which may emanate from a single source not in relation to the similarities of the goods. The fact that the cited mark is a valid U.S. registration is sufficient basis to cite based on likelihood of confusion. The applicant does not argue against the similarities of the marks.

B. Similarity of Services

The applicant has applied for use of its mark on services for providing food and drink, restaurant services. The registered mark is used on restaurant services, take-out restaurant services.

When analyzing an applicant's and registrant's goods and/or services for similarity and relatedness, that determination is based on the description of the goods and/or services stated in the application and registration at issue, not on extrinsic evidence of actual use. See *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); see also *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002).

Absent restrictions in an application and/or registration, the identified goods and/or services are presumed to travel in the same channels of trade to the same class of purchasers. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1356, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d at 1268, 62 USPQ2d at 1005. Additionally, unrestricted and broad identifications are presumed to encompass all goods and/or services of the type described. See *In re Jump Designs*, 80 USPQ2d 1370, 1374 (TTAB 2006); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992).

In this case, the identifications set forth in the application and registration(s) are identical and have no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these goods and/or services travel in all normal channels of trade, and are available to the same class of purchasers. See *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012). Accordingly, the goods and/or services of applicant and the registrant(s) are considered related for purposes of the likelihood of confusion analysis.

The goods/services of the parties need not be identical or directly competitive to find a likelihood of confusion. In this case, however, the services are identical. The applicant also does not argue against the similarities of the services.

Based on the fact that the marks are virtually identical and the services are identical, there is a likelihood of confusion in connection with the marks. Thus, when marketed under virtually identical marks, it would be likely for consumers to believe that the services of the Registrant are marketed in the same channels as the services of the Applicant.

For the reasons stated above, the examining attorney finds that because a likelihood of confusion exists between the applicant's mark and the registered mark, registration of the applicant's mark is barred under Section 2(d) of the Trademark Act.

The refusal based upon a likelihood of confusion with the registered mark is maintained and made

FINAL.

FINAL RESPONSE

If applicant does not respond within six months of the mailing date of this final Office action, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final Office action by:

- (1) Submitting a response that fully satisfies all outstanding requirements, if feasible; and/or
- (2) Filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class.

37 C.F.R. §§2.6(a)(18), 2.64(a); TBMP ch. 1200; TMEP §714.04.

In certain rare circumstances, a petition to the Director may be filed pursuant to 37 C.F.R. §2.63(b)(2) to review a final Office action that is limited to procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

/Bridgett G. Smith/
Bridgett G. Smith, Esq.
Trademark Examining Attorney
Law Office 115
(571) 272-9482 phone
bridgett.smith@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a

copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

To: Jollibee Foods Corporation (chiusptomail@bakermckenzie.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85524814 - CHICKENJOY - 120129
Sent: 11/21/2012 2:29:31 PM
Sent As: ECOM115@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION

**USPTO OFFICE ACTION HAS ISSUED ON 11/21/2012 FOR
SERIAL NO. 85524814**

Please follow the instructions below to continue the prosecution of your application:

TO READ OFFICE ACTION: Click on this [link](http://portal.uspto.gov/external/portal/tow) or go to <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to **access** the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this e-mail notification.

RESPONSE IS REQUIRED: You should carefully review the Office action to determine (1) how to respond; and (2) the applicable **response time period**. Your response deadline will be calculated from 11/21/2012 (or sooner if specified in the office action).

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System **Response Form.**

HELP: For *technical* assistance in accessing the Office action, please e-mail **TDR@uspto.gov**. Please contact the assigned examining attorney with questions about the Office action.

WARNING

Failure to file the required response by the applicable deadline will result in the **ABANDONMENT of your application.**

EXHIBIT 8

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Registrant: Chick-N-Joy Systems Limited)
Registration No.: 3567736)
Registration Date: January 27, 2009)
Mark: CHICK-N-JOY)

Jollibee Foods Corporation,)
Petitioner,)
v.)
Chick-N-Joy Systems Limited,)
Registrant.)

Cancellation No. 92057222

**PETITIONER'S FIRST SET OF
REQUESTS FOR ADMISSION TO REGISTRANT**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, and the Trademark Rules of Practice, JOLLIBEE FOODS CORPORATION ("Petitioner"), hereby requests that Registrant, CHICK-N-JOY SYSTEMS LIMITED ("CNJ" or "Registrant"), answer the following Requests for Admission separately and under oath. Responses shall be served upon Petitioner's attorneys Baker & McKenzie LLP, 300 E. Randolph Street, Suite 5000, Chicago, Illinois 60601, Attention: M. Tally George, within thirty (30) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

Petitioner realleges and reincorporates its definitions and instructions set forth in Petitioner's First Set of Interrogatories as if fully set forth here, including, but not limited to, the following:

1. The term "Petitioner's Mark" shall refer to Petitioner's mark and Petitioner's application, for CHICKENJOY, as described in Petitioner's Petition for Cancellation, specifically United States Registration No. 3949145, and Application No. 85524814, and any and all variations thereof and any and all uses thereof that would result in common law rights in the United States ("United States") for a "CHICKENJOY" word or design mark.

2. The term "CHICK-N-JOY Mark" shall refer to Registrant's mark as described in United States Trademark Registration No. 3567736, resulting from United States Application No. 78508997, and uses thereof that would result in common law rights in the United States.

REQUESTS FOR ADMISSION

1. Registrant owns United States Trademark Registration No. 3567736.
2. United States Trademark Registration No. 3567736 covers goods in International Class 43, namely, "restaurant services, take-out restaurant services."
3. Registration No. 3567736 is a word mark spelled as CHICK-N-JOY.
4. Registrant's CHICK-N-JOY Mark is not currently used in United States commerce.
5. Registrant's CHICK-N-JOY Mark has never been used in United States commerce by CNJ.
6. Registrant's CHICK-N-JOY Mark has never been used in United States commerce under CNJ's authorization.
7. Registrant's CHICK-N-JOY Mark is not used to provide services to consumers in any United States restaurants.
8. Registrant's CHICK-N-JOY Mark is not used to provide goods to consumers in any United States restaurants.
9. Registrant's CHICK-N-JOY Mark is not used on any packaging provided to United States consumers in any CHICK-N-JOY restaurants in the United States.
10. Registrant's CHICK-N-JOY Mark is not used on any menus or signage viewable by consumers inside or outside any CHICK-N-JOY restaurants in the United States.

11. There are no restaurants in the United States where a United States consumer may purchase or be served CHICK-N-JOY chicken goods.
12. There currently is not any person, company, or entity offering or providing restaurant services in United States commerce under the CHICK-N-JOY Mark, at a restaurant bearing the name CHICK-N-JOY.
13. There currently is not any person, company, or entity offering or providing restaurant services in United States commerce under the CHICK-N-JOY Mark.
14. As of May 16, 2013, there was not any person, company, or entity offering or providing restaurant services in United States commerce under the CHICK-N-JOY Mark.
15. There currently is not any person, company, or entity serving any foods or beverages of any kind in United States commerce under the CHICK-N-JOY Mark.
16. There currently is not any person, company, or entity offering or providing restaurant services of any kind in United States commerce under any CHICK-N-JOY Mark in block or stylized form, under the authorization of Registrant.
17. As of May 16, 2013, there was not any person, company, or entity offering or providing restaurant services of any kind in United States commerce under any CHICK-N-JOY Mark in block or stylized form, under the authorization of Registrant.
18. Any packaging prepared in the United States bearing a CHICK-N-JOY Mark is not used by any CHICK-N-JOY restaurants operating in the United States.
19. Any packaging in the nature of food bags or containers prepared in the United States and bearing a CHICK-N-JOY Mark, is not used for Registrant's restaurant services in the United States.
20. Any packaging in the nature of food bags or containers prepared in the United States and bearing a CHICK-N-JOY Mark, is not used for Registrant's take-out restaurant services in the United States.
21. Any packaging in the nature of food bags or containers prepared in the United States and bearing a CHICK-N-JOY Mark is not provided to any restaurant consumers in the United States.
22. No restaurant customers of Registrant see any packaging in the nature of food bags or containers that are prepared in the United States and bear a CHICK-N-JOY Mark.
23. Any packaging in the nature of food bags or containers that is prepared in the United States and bears a CHICK-N-JOY Mark is not used for restaurant services in the United States.

24. There currently is not any licensed or franchised entity offering or providing restaurant services of any kind in United States commerce under any CHICK-N-JOY Mark in block or stylized form, under the authorization of Registrant.
25. From May 16, 2010 to May 16, 2013, there was no licensed or directly owned entity offering or providing restaurant services of any kind in United States commerce under any CHICK-N-JOY Mark in block or stylized form.
26. From January 27, 2009 to January 27, 2013, there was no licensed or directly owned entity offering or providing restaurant services of any kind in United States commerce under any CHICK-N-JOY Mark in block or stylized form.
27. Application No. 78508997 resulting in Registrant's Registration No. 3567736 was filed on an intent to use or Section 1(b) basis, and a Notice of Allowance was issued on December 27, 2005.
28. Registrant did not file any proof of use in United States commerce for CHICK-N-JOY in the three year Notice of Allowance period for Application No. 78508997 resulting in Registrant's Registration No. 3567736.
29. The intent to use basis for Application No. 78508997 resulting in Registrant's Registration No. 3567736 was deleted, and the application amended to a Section 44(e) non-use basis only, as of December 2008.
30. Admit that the document attached as Exhibit 1 is Registrant's December 15, 2008 request to amend the application basis for the application resulting in Registrant's Registration No. 3567736, from Section 1(b) intent to use, to Section 44(e) foreign registration.
31. Registrant's Registration No. 3567736 is not based on use in United States commerce.
32. In the three years after January 27, 2009, Registrant did not use its CHICK-N-JOY Mark in United States commerce .
33. In the three years before May 16, 2013, Registrant did not use its CHICK-N-JOY Mark in United States commerce for restaurant services.
34. Registrant has abandoned its CHICK-N-JOY Mark in the United States.
35. Use of the CHICK-N-JOY Mark for restaurant services in Canada does not constitute use of the CHICK-N-JOY Mark in the United States.
36. Use of the CHICK-N-JOY Mark for restaurant services in Canada does not constitute use of the CHICK-N-JOY Mark in United States commerce.

64. In the three years after registration of the CHICK-N-JOY Mark, Registrant did not offer any services in United States commerce.
65. In the three years after registration of the CHICK-N-JOY Mark Registrant. did not provide any services in United States commerce.
66. In 2009, Registrant did not use the CHICK-N-JOY Mark for any services in United States commerce.
67. In 2010, Registrant did not use the CHICK-N-JOY Mark for any services in United States commerce.
68. In 2011, Registrant did not use the CHICK-N-JOY Mark for any services in United States commerce.
69. In 2012, Registrant did not use the CHICK-N-JOY Mark for any services in United States commerce.
70. In 2013, before May 16, 2013, Registrant did not use the CHICK-N-JOY Mark for any services in United States commerce.
71. In 2009, Registrant did not offer any services in United States commerce.
72. In 2010, Registrant did not offer any services in United States commerce.
73. In 2011, Registrant did not offer any services in United States commerce.
74. In 2012, Registrant did not offer any services in United States commerce.
75. In 2013, before May 16, 2013, Registrant did not offer any services in United States commerce.
76. In 2009, Registrant did not provide any services in United States commerce.
77. In 2010, Registrant did not provide any services in United States commerce.
78. In 2011, Registrant did not provide any services in United States commerce.
79. In 2012, Registrant did not provide any services in United States commerce.
80. In 2013, before May 16, 2013, Registrant did not provide any services in United States commerce.
81. In the three years after registration of the CHICK-N-JOY Mark, Registrant did not offer any goods in United States commerce.

(12) Despite requests to counsel, as of March 27, 2012, counsel still had not prepared or provided the franchise documents or disclosure documents. Chick-N-Joy did not go to other attorneys at that time because of the fees and time already invested in that firm.

(13) On March 27, 2012, Chick-N-Joy reached to out its lawyer in another attempt to develop the franchise documents. That firm never did provide the franchise documents or the disclosure documents.

(14) In October 2012, Chick-N-Joy was introduced to a company that would help develop the Franchise System and in February 2013, Chick-N-Joy retained their services.

(15) In May 2013, Chick-N-Joy was introduced to a new law firm that would be able to prepare the franchise documents and disclosure documents.

(16) In this month, June 2013, the franchise and disclosure documents were COMPLETED and the sale of one Chick-N-Joy's corporate stores is almost completed.

(17) Chick-N-Joy is now set and accepting applications for expansion in Canada and the United States. At least 3 people have asked for information about franchising in the U.S.

(18) George J. Kastanas and Chick-N-Joy had hurdles to get over and delays to deal with but through it all they had the intent to do business in the USA and took steps to do so. While Mr. Kastanas went through these development steps, Mr. Kastanas' state of mind always was that he believed that Chick-N-Joy's trademark in the USA was secure so long as the use started within five-six years of the registration of the mark. The mark was not abandoned. To say the least, the use of the mark in the U.S. always had been on the table."

109. Attached as Exhibit 2 is a true and correct copy of Petitioner's United States Trademark Registration Certificate 3949145, issued April 19, 2011.

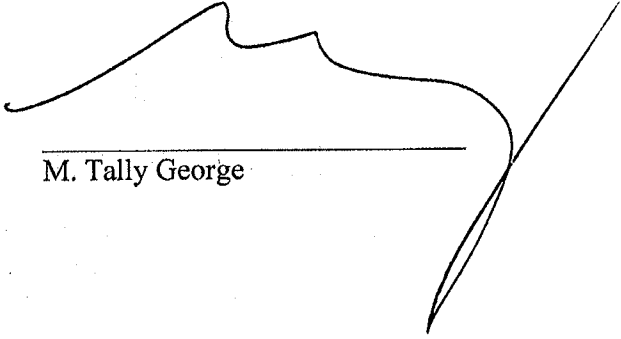
110. Attached as Exhibit 3 is a true and correct copy of Petitioner's United States Trademark Application No. 85524814, filed January 25, 2012.

PROOF OF SERVICE

The undersigned hereby certifies that the foregoing **Petitioner's First Set of Requests for Admissions to Registrant** were served on Registrant via U.S. Mail, with courtesy copy via email, to:

W. Mark Mullineaux
Astor Weiss Kaplan & Mandel LLP
200 South Broad Street, The Bellevue, Suite 600
Philadelphia, PA 19102
UNITED STATES
mmullineaux@astorweiss.com

this 22nd day of January 2014.



M. Tally George

EXHIBIT 2

To Petitioner's First Set of Requests for Admission to Registrant

United States of America

United States Patent and Trademark Office

CHICKENJOY

Reg. No. 3,949,145

Registered Apr. 19, 2011

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

JOLLIBEE FOODS CORPORATION (PHILIPPINES CORPORATION)
#10 EMERALD AVENUE, ORTIGAS CENTER
7TH FLOOR, JOLLIBEE PLAZA BUILDING,
PASIG CITY 1600, PHILIPPINES

FOR: PREPARED DISHES PRIMARILY CONTAINING CHICKEN COOKED FILIPINO-STYLE,
SOLD ONLY IN JOLLIBEE'S STORES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 6-1-1980; IN COMMERCE 5-28-1998.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-773,490, FILED 12-14-2005.

PAULA MAHONEY, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office

EXHIBIT 3

To Petitioner's First Set of Requests for Admission to Registrant

Trademark/Service Mark Application, Principal Register

Serial Number: 85524814

Filing Date: 01/25/2012

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85524814
MARK INFORMATION	
*MARK	<u>CHICKENJOY</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	CHICKENJOY
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Jollibee Foods Corporation
INTERNAL ADDRESS	10th Floor, Jollibee Plaza Building
*STREET	F. Ortigas Jr. Avenue, Ortigas Center
*CITY	Pasig City
*COUNTRY	Philippines
*ZIP/POSTAL CODE (Required for U.S. applicants only)	1600
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Philippines
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL	043

CLASS	
*IDENTIFICATION	Services for providing food and drink; restaurant services
FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS SECTION	
PRIOR REGISTRATION(S)	The applicant claims ownership of U.S. Registration Number(s) 3949145.
ATTORNEY INFORMATION	
NAME	Tally George
ATTORNEY DOCKET NUMBER	120129
FIRM NAME	Baker & McKenzie LLP
INTERNAL ADDRESS	Suite 5000
STREET	300 E. Randolph Street
CITY	Chicago
STATE	Illinois
COUNTRY	United States
ZIP/POSTAL CODE	60601
PHONE	312-861-8000
FAX	312-698-2937
EMAIL ADDRESS	chiusptomail@bakermckenzie.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Leslie Bertagnolli, Paula Krasny, Jason K. Schmitz, David J. Davis, Lisa Gates and Rebecca B. Lederhouse
CORRESPONDENCE INFORMATION	
NAME	Tally George
FIRM NAME	Baker & McKenzie LLP
INTERNAL ADDRESS	Suite 5000
STREET	300 E. Randolph Street
CITY	Chicago
STATE	Illinois
COUNTRY	United States

ZIP/POSTAL CODE	60601
PHONE	312-861-8000
FAX	312-698-2937
EMAIL ADDRESS	chiusptomail@bakermckenzie.com;tally.george@bakermckenzie.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	NOT PROVIDED
SIGNATORY'S NAME	NOT PROVIDED
SIGNATORY'S POSITION	NOT PROVIDED
DATE SIGNED	NOT PROVIDED

Trademark/Service Mark Application, Principal Register

Serial Number: 85524814

Filing Date: 01/25/2012

To the Commissioner for Trademarks:

MARK: CHICKENJOY (Standard Characters, see mark)

The literal element of the mark consists of CHICKENJOY.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Jollibee Foods Corporation, a corporation of Philippines, having an address of
10th Floor, Jollibee Plaza Building,
F. Ortigas Jr. Avenue, Ortigas Center
Pasig City 1600
Philippines

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 043: Services for providing food and drink; restaurant services
Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant claims ownership of U.S. Registration Number(s) 3949145.

The applicant's current Attorney Information:

Tally George and Leslie Bertagnolli, Paula Krasny, Jason K. Schmitz, David J. Davis, Lisa Gates and Rebecca B. Lederhouse of Baker & McKenzie LLP

Suite 5000
300 E. Randolph Street
Chicago, Illinois 60601
United States

The attorney docket/reference number is 120129.

The applicant's current Correspondence Information:

Tally George
Baker & McKenzie LLP
Suite 5000

300 E. Randolph Street

Chicago, Illinois 60601

312-861-8000(phone)

312-698-2937(fax)

chiusptomail@bakermckenzie.com;tally.george@bakermckenzie.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Declaration Signature

Signature: Not Provided Date: Not Provided

Signatory's Name: Not Provided

Signatory's Position: Not Provided

RAM Sale Number: 22940

RAM Accounting Date: 01/25/2012

Serial Number: 85524814

Internet Transmission Date: Wed Jan 25 13:08:51 EST 2012

TEAS Stamp: USPTO/BAS-208.193.53.242-201201251308511

09638-85524814-4908dee55da3876678cfa468a

e1bedf145-DA-22940-20120125121155517495

CHICKENJOY

EXHIBIT 9

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Registrant: Chick-N-Joy Systems Limited)

Registration No.: 3567736)

Registration Date: January 27, 2009)

Mark: CHICK-N-JOY)

_____)

Cancellation No. 9205722

Jollibee Foods Corporation,)

Petitioner,)

v.)

Chick-N-Joy Systems Limited)

Registrant.)

_____)

**REGISTRANT'S ANSWER TO THE PETITIONER'S REQUEST FOR
ADMISSIONS**

Registrant Chick-N-Joy Systems Limited hereby answers the Petitioner's Request
for Admissions:

1-3. Admitted

4-6 Denied.

| 7-14. Admitted.

15. Denied.

| 16-31 Admitted.

32. Denied.

33-34. Admitted.

35-43	Denied as legal conclusions.
44-45.	Admitted.
46-51.	Denied.
52-56.	Admitted.
57-61.	Denied.
62.	Admitted.
63	Denied
64-82.	Admitted.
83-87	Denied
88-106.	Admitted
107	Denied as legal conclusion.
108	Denied
109-110	Admitted

Astor Weiss Kaplan & Mandel

/s/wmm
William M. Mullineaux, Esquire

CERTIFICATE OF SERVICE

I, William M. Mullineaux, Esquire, hereby certify that on February 20, 2014, a true and correct copy of the foregoing REGISTRANT'S ANSWER TO THE PETITIONER'S REQUEST FOR ADMISSIONS was sent to the following via regular mail and electronic mail, at the following addresses:

**Leslie Bertagnolli, Esquire
Baker & McKenzie LLP
300 E. Randolph Street, Suite 5000
Chicago, IL 60601
Leslie.Bertagnolli@bakermckenzie.com**

**Kyle T. Peterson, Esquire
Patterson, Thunte, Skaar & Christensen
80th S. 8th Street
4800 IDS Center
Minneapolis, MN 55402
peterson@ptslaw.com**

Astor Weiss Kaplan & Mandel

/s/wmm
William M. Mullineaux, Esquire

EXHIBIT 10

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Registrant: Chick-N-Joy Systems Limited)
Registration No.: 3567736)
Registration Date: January 27, 2009)
Mark: CHICK-N-JOY)

Jollibee Foods Corporation,

Petitioner,

v.

Chick-N-Joy Systems Limited,

Registrant.

Cancellation No. 92057222

PETITIONER'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, JOLLIBEE FOODS CORPORATION ("Petitioner"), hereby propounds the following Interrogatories upon Registrant, CHICK-N-JOY SYSTEMS LIMITED ("CNJ" or "Registrant"),. The answers are to be sent to the offices of Baker & McKenzie LLP, 300 E. Randolph Street, Suite 5000, Chicago, Illinois 60601, Attention: M. Tally George, within thirty (30) days of service hereof.

DEFINITIONS

The following definitions apply to and are deemed incorporated into each of the Interrogatories herein.

1. The term "Petitioner" shall refer to Jollibee Foods Corporation, and any predecessor or successor of Jollibee Foods Corporation.

in commonwealths, territories, or other territory within the federal judicial system of the federal government of the United States of America, and not use in foreign nations.

INTERROGATORIES

1. State the address of each location from which Registrant currently provides or ever provided Registrant's services in United States commerce under the CHICK-N-JOY Mark and the dates these services were provided from each location.

2. State the address of each location from which Registrant currently provides or ever provided Registrant's goods in United States commerce under the CHICK-N-JOY Mark and the dates these goods were provided from each location.

3. Identify, by common commercial descriptive name each item of goods offered by or on behalf of Registrant to consumers in the United States, bearing the CHICK-N-JOY Mark, with the date the goods were first provided and/or distributed or sold in United States commerce.

4. Identify, by common commercial descriptive name each type of service offered by or on behalf of Registrant to consumers in the United States, under the CHICK-N-JOY Mark, with the date the services were first offered and provided in United States commerce.

5. Identify, by common commercial descriptive name, each item or type of goods bearing the CHICK-N-JOY Mark, provided to Registrant by any other party in the United States, pursuant to Registrant's request, order, demand or otherwise arranged.

6. For the year 2009, identify, by common commercial descriptive name, each item or type of goods or services provided and/or distributed or sold in United States commerce by Registrant under the CHICK-N-JOY Mark.

7. For the year 2010, identify, by common commercial descriptive name, each item or type of goods or services provided and/or distributed or sold in United States commerce by Registrant under the CHICK-N-JOY Mark.

8. For the year 2011, identify, by common commercial descriptive name, each item or type of goods or services provided and/or distributed or sold in United States commerce by Registrant under the CHICK-N-JOY Mark.

9. For the year 2012, identify, by common commercial descriptive name, each item or type of goods or services provided and/or distributed or sold in United States commerce by Registrant under the CHICK-N-JOY Mark.

10. For the year 2013, identify, by common commercial descriptive name, each item or type of goods or services provided and/or distributed or sold in United States commerce under the CHICK-N-JOY Mark.

11. For each item or type of goods identified in Interrogatories 6 through 10, state the quantity of each item or type of goods or volume of services, provided and/or distributed or sold in United States commerce under the CHICK-N-JOY Mark.

12. For each item or type of goods or services provided and/or distributed or sold in United States commerce under the CHICK-N-JOY Mark, state the total sales in the United States in terms of the revenue derived by calendar year.

13. For any item or type of goods or services previously provided and/or distributed or sold in United States commerce under the CHICK-N-JOY Mark that is no longer being provided, distributed or sold in United States commerce, state the date that sales ceased.

14. If Registrant contends that it has not abandoned and therefore used the CHICK-N-JOY Mark in commerce between January 27, 2009 registration date of the CHICK-N-JOY Mark and the date of your responses to these interrogatories, then for each use in commerce:

- a. Describe and explain the nature of each use in commerce;
- b. Identify the parties to any transaction, including the address, country, state or province of the parties to any transaction;
- c. Identify the location of the transaction and use in commerce;
- d. Identify the date of each use in commerce; and
- e. Identify all documents related to any claimed use in commerce.

15. Identify any item of goods bearing the CHICK-N-JOY Mark that is presently available for purchase from Registrant, in the United States, by any consumers, franchisees, wholesalers or any other party.

16. Identify any goods bearing the CHICK-N-JOY Mark provided to Registrant by any entity located or doing business in the United States, to fulfill restaurant supply orders placed by Registrant.

17. Identify any and all types of services provided in United States commerce under the CHICK-N-JOY Mark, by any party, and the year of such service.

18. Identify by common commercial descriptive name, any type of service under the CHICK-N-JOY Mark that currently is being offered in United States commerce by any party.

19. Identify by common commercial descriptive name any type of service under the CHICK-N-JOY Mark that currently is being provided to consumers within the United States, and the date such services began.

PROOF OF SERVICE

The undersigned hereby certifies that the foregoing **Petitioner's First Set of Interrogatories** was served on Registrant, via U.S. Mail, in an envelope addressed as follows:

W. Mark Mullineaux
Astor Weiss Kaplan & Mandel LLP
200 South Broad Street, The Bellevue, Suite 600
Philadelphia, PA 19102
UNITED STATES
mmullineaux@astorweiss.com

this 22nd day of January 2014.



M. Tally George

EXHIBIT 11

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Registrant: Chick-N-Joy Systems Limited)	
)	
Registration No.: 3567736)	
)	
Registration Date: January 27, 2009)	
)	
Mark: CHICK-N-JOY)	
_____)	Cancellation No. 92057222
Jollibee Foods Corporation,)	
)	
Petitioner,)	
)	
v.)	
)	
Chick-N-Joy Systems Limited)	
)	
Registrant.)	
_____)	

Chick-N-Joy Systems Limited's Amended Response to Interrogatories:

Registrant Chick-N-Joy Systems Limited, pursuant to Federal Rules of Civil Procedure, hereby serves an amended response to Petitioner's Interrogatories:

1-4. None

5. Since the day of registration, Chick-N-Joy saw that the trademark with Registration 3567736 was placed on food bags manufactured in the United States in (a) Oklahoma by Garnett Office, Factory & Warehouse, 5400 South Garnett, Tulsa, Ok, 74146 from 2011 to the present and (b) in Kentucky by Duro Bag Mfg., 7600 Empire Drive, Florence, KY 41042, (800) 879-3876, (859) 371-2150 from 2007 to 2011. (A copy of an example of the trademark placed on the bags in Oklahoma and Kentucky is attached)

6-9. None

10. The response to #5 above is incorporated herein by reference.

11-12. Chick-N-Joy currently does not have that information because the food bags are purchased from a middleman. Chick-N-Joy has requested from Garnett Office, Factory & Warehouse and Duro Bag Mfg. and the middleman information regarding the quantity and sales information requested in these interrogatories; and Chick-N-Joy has been told that the information will be provided and Chick-N-Joy will in turn provide that information to Petitioner.

Chick-N-Joy also is retrieving invoices on bags and will produce such documents; although because of the involvement of the middleman those invoices will not directly answer the interrogatories.

13. None

14. The following are the facts relied upon by Chick-N-Joy Systems Limited ("Chick-N-Joy") which show no abandonment:

(1) The Registrant Chick-N-Joy Systems Limited ("Chick-N-Joy") is in the restaurant business owning and operating three stores in Canada. George J. Kastanas is President of Chick-N-Joy.

(2) On January 27, 2009, the United States Patent and Trademark Office granted registration of Registrant's Chick-N-Joy trademark.

(3) Chick-N-Joy has had the actual intent to use the trademark Chick-N-Joy in the United States since the date of registration through today as can be seen from the facts below.

(4) At the time of the U.S. registration, Registrant owned and operated 3 stores that provided restaurant services and, among other plans, had a plan to franchise stores in Canada and the USA.

(5) At the time of the registration, Mr. Kastanas, President of Chick-N-Joy received the U.S. trademark certificate of registration for Chick-N-Joy that, in part, states:

First Filing: A Declaration of Continued Use (or Excusable Non-use) filed between the **fifth and sixth years** after the registration date.

.....
YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT
FILE THE DOCUMENTS IDENTIFIED ABOVE DURING THE
SPECIFIED TIME PERIOD.

(Emphasis added)

A copy of the certificate of registration reviewed by Mr. Kastanas is attached.

(6) Mr. Kastanas had the understanding from the trademark certificate that the requirement for use was that the use had to start at the latest between the fifth and sixth years. The correspondence from Chick-N-Joy's trademark lawyer at the time states the same deadline – between 5 and 6 years.

(7) Chick-N-Joy's trademark lawyer at the time did not advise Mr. Kastanas or Chick-N-Joy that if Chick-N-Joy did not use the trademark in the United States within three years that there would be a rebuttable presumption that Chick-N-Joy abandoned use of the trademark. Mr. Kastanas and Chick-N-Joy were unaware of that three year time period.

(8) Based on the information from the company's attorney and from the U.S. trademark certificate, Mr. Kastanas believed that Chick-N-Joy did not risk losing the trademark because of non-use so long as a declaration of continued use was filed between

5 and 6 years after January 27, 2008 or between January 27, 2013 and January 27, 2014.

The 5-6 year period has not expired.

(9) There were delays in Chick-N-Joy operating in the USA caused by delays of its attorneys. Chick-N-Joy's concrete plans were to go to the USA after it put in place the structure for its operations, including franchise agreements and disclosure documents.

(10) On April 30, 2010 legal counsel was hired to render advice, consultation, and document preparation in franchising matters. Documents would consist of revised franchise agreements as well as disclosure documents.

(11) On May 28, 2010, Chick-N-Joy asked legal counsel to prepare agreements for the sale and franchising of two existing CHICK-N-JOY corporate stores.

(12) Despite requests to counsel, as of March 27, 2012, counsel still had not prepared or provided the franchise documents or disclosure documents. Chick-N-Joy did not go to other attorneys at that time because of the fees and time already invested in that firm.

(13) On March 27, 2012, Chick-N-Joy reached to out its lawyer in another attempt to develop the franchise documents. That firm never did provide the franchise documents or the disclosure documents.

(14) In October 2012, Chick-N-Joy was introduced to a company that would help develop the Franchise System and in February 2013, Chick-N-Joy retained their services.

(15) In May 2013, Chick-N-Joy was introduced to a new law firm that would be able to prepare the franchise documents and disclosure documents.

(16) In this month, June 2013, the franchise and disclosure documents were COMPLETED and the sale of one Chick-N-Joy's corporate stores is almost completed.

(17) Chick-N-Joy is now set and accepting applications for expansion in Canada and the United States. At least 3 people have asked for information about franchising in the U.S.

(18) George J. Kastanas and Chick-N-Joy had hurdles to get over and delays to deal with but through it all they had the intent to do business in the USA and took steps to do so. While Mr. Kastanas went through these development steps, Mr. Kastanas' state of mind always was that he believed that Chick-N-Joy's trademark in the USA was secure so long as the use started within five-six years of the registration of the mark. The mark was not abandoned. To say the least, the use of the mark in the U.S. always had been on the table.

(19) Since the day of registration, Chick-N-Joy saw that the trademark with Registration 3567736 was placed on food bags manufactured in the United States in (a) Oklahoma by Garnett Office, Factory & Warehouse, 5400 South Garnett, Tulsa, Ok, 74146 from 2011 to the present. (a copy of an example of the trademark placed on the bags in Oklahoma is attached) and (b) in Kentucky by Duro Bag Mfg., 7600 Empire Drive, Florence, KY 41042, (800) 879-3876, (859) 371-2150 from 2007 to 2011.

- 15. None.
- 16- 27. The response to #5 is incorporated herein.
- 28. The response to #14 is incorporated herein.
- 29. George J. Kastanas
- 30. George J. Kastanas and all documents and information in this response and produced herewith, including in the response to the Request for Documents.

- 31. None
- 32. None at this time.
- 33. None at this time.
- 34. The decision has not been made, except it will call George J. Kastanas.
- 35. Such documentation is produced herewith.

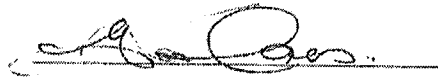
Respectfully submitted,

/s/wmm
William M. Mullineaux, Esquire

VERIFICATION

I, George J. Kastanas, hereby verify that the facts in the foregoing **Responses to Interrogatories** are true and correct to the best of my knowledge and belief. The undersigned understands that the statements therein are made subject to the penalties of perjury relating to unsworn falsification to authorities.

Date: March 17 2014

A handwritten signature in black ink, appearing to read "George J. Kastanas", is written over a horizontal line.

George J. Kastanas

CERTIFICATE OF SERVICE

I, William M. Mullineaux, Esquire, hereby certify that on March 18, 2014, a copy of the foregoing Amended Response to Interrogatories were sent by electronic mail to counsel for Petitioner at the following address:

**Leslie Bertagnolli, Esquire
Baker & McKenzie LLP
300 E. Randolph Street, Suite 5000
Chicago, IL 60601
Leslie.Bertagnolli@bakermckenzie.com**

/s/wmm

William Mark Mullineaux

EXHIBIT 12

ESTTA Tracking number: **ESTTA545041**

Filing date: **06/25/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057222
Party	Defendant Chick-N-Joy Systems Limited
Correspondence Address	CHICK N JOY SYSTEMS LIMITED 4449 KINGSTON ROAD TORONTO ONTARIO, M1E 2N7 CANADA
Submission	Answer
Filer's Name	William M. Mullineaux
Filer's e-mail	mmullineaux@astorweiss.com
Signature	/s/wmm
Date	06/25/2013
Attachments	Reg Answer to Petition for Cancellation- filed final.pdf(240013 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Registrant: Chick-N-Joy Systems Limited)	
)	
Registration No.: 3567736)	
)	
Registration Date: January 27, 2009)	
)	
Mark: CHICK-N-JOY)	
_____)	Cancellation No. 92057222
)	
Jollibee Foods Corporation,)	
)	
Petitioner,)	
)	
v.)	
)	
Chick-N-Joy Systems Limited)	
)	
Registrant.)	
_____)	

REGISTRANT'S ANSWER TO THE PETITION FOR CANCELLATION

Registrant Chick-N-Joy Systems Limited hereby answers the Petition for Cancellation:

1. Denied. Registrant is without knowledge or information sufficient to form a belief as to the truth of the averment.

2. Denied. Registrant is without knowledge or information sufficient to form a belief as to the truth of the averment.

3. Denied. Registrant is without knowledge or information sufficient to form a belief as to the truth of the averment.

4. Denied. Registrant is without knowledge or information sufficient to form a belief as to the truth of the averment.

5. Denied. Registrant is without knowledge or information sufficient to form a belief as to the truth of the averment.

6. Denied. Registrant is without knowledge or information sufficient to form a belief as to the truth of the averment.

7. Denied as a legal conclusion.

8. Admitted.

9. Admitted.

10. Admitted.

11. Denied. Within the alleged "three year Notice of Allowance" period, Registrants' application was amended to become an application on a Section 44 (e) basis. Because of that amendment Registrant was not required to file a Proof of Use in U.S.

12. Admitted.

13. Denied. Within the alleged "three year Notice of Allowance" period, Registrants' application was amended to become an application on a Section 44 (e) basis. Because of that amendment Registrant was not required to file a Proof of Use in U.S.

14. Denied. Since the day of registration, Chick-N-Joy saw that the trademark with Registration 3567736 was placed on food bags manufactured by another company in Oklahoma, U.S.A. The use of the trademark on bags manufactured in Oklahoma is contrary to the allegation that Registrant abandoned the trademark for use in the U.S.

15. Denied. Since the day of registration, Chick-N-Joy saw that the trademark with Registration 3567736 was placed on food bags manufactured by another company in Oklahoma, U.S.A. The use of the trademark on bags manufactured in Oklahoma is contrary to the allegation that Registrant abandoned the trademark for use in the U.S.

16. Denied. Since the day of registration, Chick-N-Joy saw that the trademark with Registration 3567736 was placed on food bags manufactured by another company in Oklahoma, U.S.A. The use of the trademark on bags manufactured in Oklahoma is contrary to the allegation that Registrant abandoned the trademark for use in the U.S.

17. Denied. There was no abandonment. To the contrary the trademark is used on food bags manufactured in Oklahoma. In addition, the following facts show no abandonment:

(1) The Registrant Chick-N-Joy Systems Limited ("Chick-N-Joy") is in the restaurant business owning and operating three stores in Canada. George J. Kastanas is President of Chick-N-Joy.

(2) On January 27, 2009, the United States Patent and Trademark Office granted registration of Registrant's Chick-N-Joy trademark.

(3) Chick-N-Joy has had the actual intent to use the trademark Chick-N-Joy in the United States since the date of registration through today as can be seen from the facts below.

(4) At the time of the U.S. registration, Registrant owned and operated 3 stores that provided restaurant services and, among other plans, had a plan to franchise stores in Canada and the USA.

(5) At the time of the registration, Mr. Kastanas, President of Chick-N-Joy received the U.S. trademark certificate of registration for Chick-N-Joy that, in part, states:

First Filing: A Declaration of Continued Use (or Excusable Non-use) filed between the **fifth and sixth years** after the registration date.

.....
YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS IDENTIFIED ABOVE DURING THE SPECIFIED TIME PERIOD.

(Emphasis added)

A copy of the certificate of registration reviewed by Mr. Kastanas is attached as Exhibit A.

(6) Mr. Kastanas had the understanding from the trademark certificate that the requirement for use was that the use had to start at the latest between the fifth and sixth years. The correspondence from Chick-N-Joy's trademark lawyer at the time states the same deadline – between 5 and 6 years.

(7) Chick-N-Joy's trademark lawyer at the time did not advise Mr. Kastanas or Chick-N-Joy that if Chick-N-Joy did not use the trademark in the United States within three years that there would be a rebuttable presumption that Chick-N-Joy abandoned use of the trademark. Mr. Kastanas and Chick-N-Joy were unaware of that three year time period.

(8) Based on the information from the company's attorney and from the U.S. trademark certificate, Mr. Kastanas believed that Chick-N-Joy did not risk losing the trademark because of non-use so long as a declaration of continued use was filed between 5 and 6 years after January 27, 2008 or between January 27, 2013 and January 27, 2014. The 5-6 year period has not expired.

(9) There were delays in Chick-N-Joy operating in the USA caused by delays of its attorneys. Chick-N-Joy's concrete plans were to go to the USA after it put in place the structure for its operations, including franchise agreements and disclosure documents.

(10) On April 30, 2010 legal counsel was hired to render advice, consultation, and document preparation in franchising matters. Documents would consist of revised franchise agreements as well as disclosure documents.

(11) On May 28, 2010, Chick-N-Joy asked legal counsel to prepare agreements for the sale and franchising of two existing CHICK-N-JOY corporate stores.

(12) Despite requests to counsel, as of March 27, 2012, counsel still had not prepared or provided the franchise documents or disclosure documents. Chick-N-Joy did not go to other attorneys at that time because of the fees and time already invested in that firm.

(13) On March 27, 2012, Chick-N-Joy reached to out its lawyer in another attempt to develop the franchise documents. That firm never did provide the franchise documents or the disclosure documents.

(14) In October 2012, Chick-N-Joy was introduced to a company that would help develop the Franchise System and in February 2013, Chick-N-Joy retained their services.

(15) In May 2013, Chick-N-Joy was introduced to a new law firm that would be able to prepare the franchise documents and disclosure documents.

(16) In this month, June 2013, the franchise and disclosure documents were COMPLETED and the sale of one Chick-N-Joy's corporate stores is almost completed.

(17) Chick-N-Joy is now set and accepting applications for expansion in Canada and the United States. At least 3 people have asked for information about franchising in the U.S.

(18) George J. Kastanas and Chick-N-Joy had hurdles to get over and delays to deal with but through it all they had the intent to do business in the USA and took steps to do so. While Mr. Kastanas went through these development steps, Mr. Kastanas' state of mind always was that he believed that Chick-N-Joy's trademark in the USA was secure so long as the use started within five-six years of the registration of the mark. The mark was not abandoned. To say the least, the use of the mark in the U.S. always had been on the table.

18. Denied. The averments constitute a little conclusion to which no response is required.

Affirmative Defenses

- I. Registrant never intended to abandon the Chick-N-Joy trademark.
- II. Registrant hereby incorporates by reference all of the assertions in subparagraphs (1)-(18) in answer to No. 17 above.

WHEREFORE, Registrant Chick-N-Joy Systems requests that the Petition for Cancellation be denied.

Respectfully submitted

/s/wmm
William M. Mullineaux, Esquire

CERTIFICATE OF SERVICE

I, William M. Mullineaux, Esquire, hereby certify that on June 25, 2013, a true and correct copy of the foregoing **Registrant's Answer to the Petition for Cancellation** was sent to the following via regular mail and electronic mail, at the following addresses:

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